No. 19-373

IN THE
Supreme Court of the United States

JAMES WALKER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

BRIEF OF FAMM AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether a criminal offense that can be committed with a *mens rea* of recklessness can qualify as a "violent felony" under the Armed Career Criminal Act.

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INTEREST OF *AMICUS CURIAE* [1]

Amicus FAMM (formerly Families Against Mandatory Minimums) is a national, nonprofit, nonpartisan organization whose primary mission is to promote fair and rational sentencing policies and to challenge mandatory sentencing laws and the ensuing inflexible and excessive penalties. Founded in 1991, FAMM currently has 65,000 members nationwide. By mobilizing prisoners and their families adversely affected by unjust sentences, FAMM illuminates the human face of sentencing as it advocates for state and federal sentencing reform. FAMM advances its charitable purposes in part through education of the general public and through selected *amicus* filings in important cases.

In recognition of the destructive toll mandatory minimums exact on FAMM's members in prison, their loved ones, and their communities, FAMM submits this brief in support of petitioner. The decision below, if allowed to stand, would greatly expand the number of state crimes that qualify as predicate offenses under the Armed Career Criminal Act, leading to even more counterproductive mandatory minimum sentences. In light of the grave harm mandatory minimums impose, FAMM is keenly interested in ensuring they are used sparingly and only in accordance with due process.

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[1] Pursuant to this Court's Rule 37.6, *amicus* states that this brief was not authored in whole or in part by counsel for any party, and that no person or entity other than *amicus*, its members, or its counsel made a monetary contribution intended to fund the preparation or submission of this brief. The parties have consented to the filing of our *amicus curiae* brief in accord with Supreme Court Rule 37.3.

SUMMARY OF ARGUMENT

Congress intended for the Armed Career Criminal Act (ACCA) to impose severe mandatory minimum sentences on the small group of persons whose prior offenses suggest a likelihood of future violent criminal conduct. The ACCA's force clause reflects this intent, defining a "violent felony" as one where the use of force is exerted *against* another person. 18 U.S.C. § 924(e)(2)(B)(i). The ACCA punishes these repeat violent offenders with severe 15-year mandatory minimum sentences for firearm possession.

But crimes committed with a *mens rea* of recklessness are often mishaps or mistakes—such as striking a pedestrian while asleep at the wheel or unintentionally firing a gun. The individuals who make these tragic mistakes are not the armed career criminals Congress intended to punish with 15-year mandatory minimum sentences: their crimes "reveal a degree of callousness toward risk," but they do not "show an increased likelihood that the offender is the kind of person who might deliberately point the gun and pull the trigger." *Begay v. United States*, 553 U.S. 137, 146 (2008), *abrogated on other grounds by Johnson v. United States*, 135 S. Ct. 2551 (2015).

Affirming the Sixth Circuit's decision would sweep into the ACCA's scope statutes that do not comport with Congress's intent to penalize dangerous career offenders. Vehicular homicide and vehicular assault statutes—which highlight the critical difference between reckless conduct and intentional or purposeful conduct—provide powerful examples. Defining "violent felony" to encompass reckless conduct would also significantly expand the number of crimes that qualify as "violent felon[ies]" under the force clause, subjecting more offenders to the ACCA's harsh 15-

year mandatory minimum. The unfair and absurd outcomes of this expansive definition, which stretches the statute's text and distorts its purpose, leave no room for an alternative: crimes with a *mens rea* of recklessness are not violent felonies under the ACCA.

ARGUMENT

I. Crimes With a *Mens Rea* of Recklessness Are Not Violent Felonies Under the ACCA.

Crimes that can be committed recklessly do not qualify as violent felonies, and thus cannot serve as predicate offenses, under the ACCA.

The ACCA defines "violent felon[ies]" as offenses that "ha[ve] as an element the use, attempted use, or threatened use of physical force *against* the person of another"—meaning the individual using, attempting to use, or threatening to use force must direct it toward another. 18 U.S.C. § 924(e)(2)(B)(i) (emphasis added). But persons acting recklessly do not target others; rather, they disregard a substantial risk that injury may occur. This textual interpretation is so straightforward that, before 2016, the courts of appeals were unanimous in concluding that crimes that can be committed with a *mens rea* of recklessness do not qualify as violent felonies under the ACCA's force clause. Pet. for Cert. 14–15; *see also United States v. Castleman*, 572 U.S. 157, 169 n.8 (2014) (acknowledging that the courts of appeals have "uniformly held that recklessness is not sufficient" to constitute the use of force); *Oyebanji v. Gonzales*, 418 F.3d 260, 264 (3d Cir. 2005) (Alito, J.) ("[A]ccidental conduct (which would seem to include reckless conduct) is not enough to qualify as a crime of violence.").

This Court's holding in *Voisine v. United States*, 136 S. Ct. 2272 (2016), that a *mens rea* of recklessness

suffices to establish a "misdemeanor crime of domestic violence" under Section 921(a)(33)(A), does not support the Sixth Circuit's decision regarding Section 924(e). The broader language at issue in *Voisine* reflected Congress's intent to reach a wider range of conduct. *See* 18 U.S.C. § 921(a)(33)(A)(ii); 18 U.S.C. § 922(g)(9). The rule against surplusage demands the additional language modifying the "use of physical force," specifically "against the person of another[,]" be given meaning. *See Ratzlaf v. United States*, 510 U.S. 135, 140–41 (1994).

The divergent purposes of these two statutes further support these different interpretations. Indeed, Congress deliberately enacted Section 922(g)(9) "in order to prohibit domestic abusers convicted under run-of-the-mill misdemeanor assault and battery laws from possessing guns." *Voisine*, 136 S. Ct. at 2278. Domestic violence is a particularly concerning type of violence that "often escalates in severity over time." *Castleman*, 572 U.S. at 160. And more than two-thirds of state misdemeanor domestic assault or battery statutes can be satisfied by recklessness, so "construing [the statute] to exclude crimes committed with that state of mind would substantially undermine the provision's design." *Voisine*, 136 S. Ct. at 2278.

In contrast, the provision at issue here differentiates, for punishment purposes, among a large and all-too-quotidian universe of persons already subject to up to ten years in prison. Congress enacted that provision to punish much more severely the narrow category of gun-possessing career offenders whom Congress deemed likely to "deliberately point the gun and pull the trigger." *Begay*, 553 U.S. at 146; *see also* H.R. Rep. No. 98-1073, at 1 (1984) (explaining that a "large percentage" of violent crimes "are committed by a very

small percentage of repeat offenders"). "The title of the ACCA—the *Armed Career Criminal* Act—was not merely decorative." *United States v. Middleton*, 883 F.3d 485, 499 (4th Cir. 2018) (Floyd, J., concurring) (quotation marks omitted). This sentencing provision's purpose—to target a small group of especially dangerous drug traffickers and violent criminals—suggests that it should be construed narrowly.

Finally, the rule of lenity demands that the ACCA's force clause be read to exclude offenses that can be committed recklessly. *See Ratzlaf*, 510 U.S. at 148. Under the Sixth Circuit's interpretation, "a slew of everyday offenses" would come "within the ACCA's reach, thereby 'blur[ring] the distinction between the "violent" crimes Congress sought to distinguish for heightened punishment and other crimes.'" Pet. Br. 38 (alteration in original) (quoting *Leocal v. Ashcroft*, 543 U.S. 1, 11 (2004)); *see also Castleman*, 572 U.S. at 167. This concern is not merely theoretical; "[l]ast year alone, more than 6,700 individuals were convicted under 18 U.S.C. [§] 922(g), the firearms-possession statute to which the ACCA applies, and that number has been increasing." Pet. for Cert. at 20. Any ambiguity in the ACCA "should be resolved in the defendant's favor" and avoid a vast expansion of the ACCA's mandatory minimum sentencing enhancement. *United States v. Davis*, 139 S. Ct. 2319, 2333 (2019).

II. Expanding the ACCA's Definition of "Violent Felony" to Encompass Crimes With a *Mens Rea* of Recklessness Would Unnecessarily Expose Defendants to Harsh Mandatory Minimum Sentences.

A survey of statutes that encompass reckless conduct illustrates how the court of appeals' expansive

definition of the "use of force" would sweep in numerous offenses in ways that do not comport with the common-sense notion of a "violent felony." In fact, the Sixth Circuit's interpretation would categorize as violent felonies unintentional conduct covered by a slew of vehicular homicide and assault statutes. It would also label conduct that is disorderly, but that carries little risk of continued harm or danger to society, as a violent felony. Finally, the interpretation adopted below would brand individuals who commit crimes like involuntary manslaughter as violent felons, even if the crime is committed in a way that does not evince a tendency toward future violent behavior. This survey shows that the Sixth Circuit's interpretation is contrary to both the ACCA's text and purpose, leading to the needless proliferation of mandatory minimum sentences.

A. Statutes Criminalizing Reckless Driving Resulting in Physical Harm Illustrate the Fundamental Flaw of the Sixth Circuit's Interpretation of the Force Clause.

1. Injuring another after falling asleep at the wheel is both a tragedy and a crime. But such conduct does not evince a propensity for future violent criminal conduct. Convictions for vehicular homicide and assault should not be used to trigger a 15-year mandatory minimum under 18 U.S.C. § 924(e). If this Court holds that crimes that may be committed with a *mens rea* of recklessness satisfy the force clause, prosecutors may use vehicular homicide or vehicular assault convictions to seek a 15-year mandatory minimum sentence under the ACCA if that careless driver later possesses a firearm.

As this Court acknowledged in *Begay*, "crimes involving intentional or purposeful conduct" are in their own category. 553 U.S. at 146. Crimes such as driving under the influence "reveal a degree of callousness toward risk," whereas crimes involving intentional conduct "show an increased likelihood" of future intentional use of a gun. *Id.* There is "no reason to believe that Congress intended a 15-year mandatory prison term where that increased likelihood does not exist." *Id.*

This is more than a theoretical concern. Prosecutors have used or attempted to use vehicular homicide and vehicular assault convictions to increase sentencing penalties under the ACCA or under identical language in the United States Sentencing Guidelines. *E.g.*, *Kirk v. United States*, 481 F. App'x 249, 249 (6th Cir. 2012) (per curiam) (government used vehicular assault as a predicate offense under the residual clause); *United States v. Herrick*, 545 F.3d 53, 57 (1st Cir. 2008) (government used homicide by negligent operation of a motor vehicle as a "crime of violence" under the Sentencing Guidelines); *United States v. Penny*, 220 F. App'x 449, 450 (8th Cir. 2007) (per curiam) (probation officer concluded defendant was armed career criminal for offenses including a hit and run); *Thornton v. United States*, No. 11-cr-253, 2018 WL 1088028 (M.D. Pa. Feb. 28, 2018) (presentence report listed homicide by vehicle as predicate offense under the ACCA).

Moreover, "[s]ince *Johnson II*, federal prosecutors have attempted to stretch the bounds of the force clause to compensate for the now-invalid residual clause." *Middleton*, 883 F.3d 485 at 492–93 (referring to *Johnson v. United States*, 135 S. Ct. 2551 (2015)); *see*, *e.g.*, *United States v. Hodge*, 902 F.3d 420, 427

(4th Cir. 2018) (rejecting the government's attempt to recategorize the petitioner's prior reckless endangerment conviction under the force clause after *Johnson II* invalidated the residual clause); *United States v. Rose*, 896 F.3d 104, 115 (1st Cir. 2018) (concluding that petitioner's conviction for assault with a deadly weapon, which qualified as a violent felony under the now-invalidated residual clause, is not a violent felony per the force clause because it can be committed with a reckless mental state); *see also* Pet. Br. 38–39 (listing assault convictions based on reckless driving).

2. Numerous vehicular homicide and vehicular assault statutes criminalize reckless conduct. For example, in Tennessee, "[v]ehicular homicide is the reckless killing of another by the operation of an automobile, airplane, motorboat or other motor vehicle, as the proximate result of: (1) Conduct creating a substantial risk of death or serious bodily injury to a person[.]" TENN CODE ANN. § 39-13-213. Similarly, in Washington, "[w]hen the death of any person ensues within three years as a proximate result of injury proximately caused by the driving of any vehicle by any person, the driver is guilty of vehicular homicide if the driver was operating a motor vehicle: . . . (b) In a reckless manner[.]" WASH. REV. CODE § 46.61.520. And under Ohio's criminal code, "[n]o person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, shall cause the death of another or the unlawful termination of another's pregnancy in any of the following ways: . . . (2) . . . (a) Recklessly[.]" OHIO REV. CODE ANN. § 2903.06; *see also* 75 PA. CONS. STAT. § 3732; VA. CODE ANN. § 46.2-865.1.

A New Jersey statute illustrates how momentary lapses of judgment could help trigger a 15-year mandatory minimum. New Jersey criminalizes vehicular homicide "when it is caused by driving a vehicle or vessel recklessly." N.J. STAT. ANN. § 2C:11-5. Under the statute, evidence of (1) falling asleep after having been without sleep for a period in excess of 24 consecutive hours, (2) driving while intoxicated, (3) operating a cell phone, (4) or weaving between lanes "may give rise to an inference that the defendant was driving recklessly." *Id.* Texting and talking on the phone while driving, or falling asleep at the wheel, are evidence of poor judgment. They are not evidence of a propensity for engaging in criminal violence against another.

3. Some courts may attempt to cabin prosecutors' attempts to use vehicular homicide and assault as predicate offenses by focusing on the causal link between an offender's conduct and resulting injury. *See Middleton*, 883 F.3d at 492 (examining causation for involuntary manslaughter conviction). However, after *United States v. Castleman*, 572 U.S. 157 (2014), courts cannot rely on a theory of attenuated causation to avoid having reckless driving serve as a predicate offense. In *Castleman*, this Court rejected the proposition that "pulling the trigger on a gun is not a 'use of force' because it is the bullet, not the trigger, that actually strikes the victim." *Id.* at 171. Subsequent lower-court decisions have affirmed that a "defendant uses physical force whenever his volitional act sets into motion a series of events that results in the application of a 'force capable of causing physical pain or injury to another person.'" *United States v. Verwiebe*, 874 F.3d 258, 261 (6th Cir. 2017) (quoting *United States v. Evans*, 699 F.3d 858, 864 (6th Cir. 2012)).

Vehicular homicide and vehicular assault inherently involve the use of physical force that causes injury. Without a definitive holding that crimes committed with the *mens rea* of recklessness are not violent felonies under the ACCA, prosecutors will be free to use vehicular homicide and assault convictions as predicate offenses, even though such crimes are "far removed . . . from the deliberate kind of behavior associated with violent criminal use of firearms." *Begay*, 553 U.S. at 147.

B. Construing "Violent Felony" to Include Reckless Conduct Would Significantly Increase the Number of Qualifying Offenses.

The potentially significant increase in predicate offenses that would satisfy the force clause under the Sixth Circuit's definition is not limited to vehicular offenses. Defining "violent felony" to encompass reckless conduct would sweep in numerous additional statutes that do not comport with the ACCA's purpose of penalizing dangerous career offenders.

First, the inclusion of reckless conduct would raise serious questions about the causal link between an offender's conduct and the resulting bodily injury. For example, California criminalizes recklessly setting fire to or causing to be burned any structure, forest land, or property, which is a felony if it causes "great bodily injury." CAL. PENAL CODE § 452(a). Utah criminalizes "engag[ing] in tumultuous or violent conduct and thereby knowingly or recklessly creat[ing] a substantial risk of causing public alarm" in a group of three or more people, which is a felony if it results in bodily injury. UTAH CODE ANN. § 76-9-101. Expanding the ACCA's force clause to cover reckless conduct would require courts to grapple with attenuated

causal links between conduct and bodily injury where a defendant neither intended nor knew that his actions would physically harm other people—for example, where a person startled by the "tumultuous conduct" criminalized by Utah's statute trips over a curb and breaks his arm when attempting to run away from the rowdy group. After *Castleman*, the indirect nature of this injury would not suffice to disqualify this offense as a "violent felony." 572 U.S. at 170.

Second, expansion of the force clause would sweep in offenses that do not comport with traditional notions of an "armed career criminal" because they can be committed recklessly and do not evince a commitment to violent criminal enterprise as the ACCA intends. These offenses include:

- Endangering public transportation;[2]
- Interference with the operator of a public transit vehicle;[3]
- Abuse of a sports official;[4]
- Using a firearm or archery tackle in a manner to endanger the bodily safety of another person;[5]
- Hazing;[6]

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2 COLO. REV. STAT. ANN. § 18-9-115(1)(d)(I).

3 HAW. REV. STAT. ANN. § 711-1112(1)(a).

4 DEL. CODE ANN. tit. 11, § 614(a)(2).

5 GA. CODE ANN. § 16-11-108(a).

6 LA. STAT. ANN. § 14:40.8(A)(2)(b); MICH. COMP. LAWS ANN. § 750.411t(2)(b)–(c); 18 PA. CONS. STAT. § 2803; UTAH CODE ANN. § 76-5-107.5(1); WIS. STAT. ANN. § 948.51(2).

- Causing serious bodily injury while managing a physical exercise program;[7] and
- Injuring another while engaging in a race.[8]

Third, an expansive definition of the ACCA's force clause would equate repeated reckless conduct with armed career criminal status; violations of some statutes encompassing reckless conduct become felonies only with subsequent offenses. *See*, *e.g.*, ARK. CODE ANN. § 5-26-305; OR. REV. STAT. § 163.160; S.D. CODIFIED LAWS § 22-18-1.

Fourth, extending the force clause to cover reckless conduct would result in arbitrary distinctions between offenders based on facts about the individuals who are neither intentionally nor knowingly harmed by the offenders' conduct. Numerous assault and battery statutes encompassing reckless conduct draw distinctions between misdemeanors and felonies based on facts about the victim, often without requiring the defendant's knowledge of those facts. These status-based distinctions include:

- Age;[9]
- Profession;[10]

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7 MASS. GEN. LAWS ANN. ch. 265, § 40.

8 VA. CODE ANN. § 46.2-865.1(A).

9 ALASKA STAT. ANN. § 11.41.220(a)(1)(C); ARIZ. REV. STAT. ANN. § 13-1204; DEL. CODE ANN. tit. 11, § 612; ME. REV. STAT. tit. 17-A, § 207.

10 ARIZ. REV. STAT. ANN. § 13-1204; ME. REV. STAT. tit. 17-A, § 752-E; ME. REV. STAT. tit. 17-A, § 752-C; ME. REV. STAT. tit. 17-A, § 752-A; MASS. GEN. LAWS ANN. ch. 265, § 13D; TEX. PENAL CODE ANN. § 22.01; NEB. REV. STAT. § 28-931; N.J. STAT. ANN. § 2C:12-1; N.C. GEN. STAT. ANN. § 14-16.6.

- Health status;[11] and
- Pregnancy status.[12]

Thus, under a definition of "violent felony" that includes reckless conduct, the status of the person who is harmed by that conduct makes all the difference in such cases, even if the defendant did not know the victim's status. This result is entirely detached from the offender's culpability and the danger his possession of a firearm poses to society.

These statutes reveal the disconnect between crimes that can be committed with a *mens rea* of recklessness and a defendant's culpability if those crimes can serve as predicate offenses for assigning that defendant the label of "armed career criminal." They also illustrate just a small sample of new qualifying offenses that federal courts will have to parse and examine in sentencing if this Court adopts the Sixth Circuit's interpretation of the force clause. This potentially vast expansion of the ACCA is contrary to the text, history, and purpose of the statute.

C. Classifying Crimes With a *Mens Rea* of Recklessness as Violent Felonies Would Lead to Unfair and Absurd Outcomes.

In addition to increasing the number of qualifying offenses under the ACCA, the Sixth Circuit's interpretation of Section 924(e)(2)(B)(i) contravenes the ACCA's purpose by broadly categorizing as hardened, career criminals those who made careless and reckless mistakes. But the ACCA's purpose was not to impose harsh mandatory minimums on individuals who act with "a degree of callousness toward risk," *Begay*,

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11 DEL. CODE ANN. tit. 11, § 1105.

12 DEL. CODE ANN. tit. 11, § 612.

553 U.S. at 146; rather, the ACCA set out to punish the small number of career offenders who commit crimes in a "purposeful, violent, and aggressive manner." *Id.* at 145. The Sixth Circuit's holding rejects this context by classifying reckless crimes as violent felonies, thus exposing a vast group of individuals who made mistakes, but who are not in any real sense armed career criminals, to the ACCA's 15-year mandatory minimum penalty.

Individuals who commit crimes with a mental state of recklessness are not purposefully using force against another person, and therefore are not the type of offender this sentencing provision is targeting. Consider, for example, the case of Robert Hambright. *State v. Hambright*, 426 S.E.2d 806 (S.C. Ct. App. 1992). Hambright was convicted of involuntary manslaughter in South Carolina. Under South Carolina law, involuntary manslaughter is the unintentional killing of another without malice "while the defendant was engaged in either (1) an unlawful activity not amounting to a felony and not naturally tending to cause death or great bodily harm, or (2) a lawful activity with a reckless disregard of the safety of others." *State v. Collins*, 763 S.E.2d 22, 26 (S.C. 2014). Hambright was convicted after selling alcohol to a group of high school students who later caused a deadly car crash. *Hambright*, 426 S.E.2d at 807. As two judges on the Fourth Circuit explained, "it is unnatural—even absurd—to equate causing a deadly car crash through an illegal sale of alcohol to minors to 'using' physical force against the person of another." *Middleton*, 883 F.3d at 497 (Floyd, J., joined by Harris, J., concurring).

The lower court's decision would also brand individuals who unintentionally and tragically shoot

friends or companions as violent felons. For example, there is the case of Wayne Chapman, who was convicted of felony murder, with an underlying conviction of misuse of a firearm while hunting, GA. CODE ANN. § 16-11-108, and involuntary manslaughter for unintentionally shooting his companion while hunting. *Chapman v. State*, 467 S.E.2d 497, 498 (Ga. 1996). Chapman went out with a friend of his teenage daughter. *Id.* The pair agreed to split up while hunting and meet back at their vehicle when they finished. Chapman arrived back at the rendezvous point first, and while he was waiting, Chapman heard a sound in the brush. Believing the noise was from a deer, Chapman fired his gun into the brush, but hit and killed his teenage companion instead. *Id.* And there is the case of *State v. Kernes*, where the defendant was drunkenly roughhousing with his friend when he pointed a loaded gun at him and unintentionally discharged the weapon, killing his friend. 262 N.W.2d 602, 603 (Iowa 1978).[13]

Affirming the Sixth Circuit's ruling would also sweep in cases where the offender unintentionally causes the death of another while trying to act in self-defense. For example, a woman who was convicted of murder for unintentionally shooting her friend's husband when he approached her porch wielding a knife had her conviction overturned because the trial court should have allowed an involuntary manslaughter charge given that there was evidence to suggest her

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[13] Kernes's conviction was reversed by the Iowa Supreme Court because the trial court erred by giving an instruction that suggested negligent conduct was enough to sustain a conviction for manslaughter. 262 N.W.2d at 605. The court held that proof of recklessness was required, but noted that "a person who causes the death of another by attempting to handle a deadly weapon while intoxicated is" acting recklessly. *Id.* at 605–06.

"reckless handling of the shotgun result[ed] in the death of Victim." *State v. Mekler*, 664 S.E.2d 477, 478–79 (S.C. 2008). Or consider the case of Norma Jean Darnell. *Darnell v. Commonwealth*, 370 S.E.2d 717, 717 (Va. Ct. App. 1988). Darnell arrived home late at night to find over a dozen messages from an ex-boyfriend on her answering machine. *Id.* Minutes later, the ex-boyfriend arrived at her home "drunk and argumentative," entering through her back door. *Id.* After she convinced him to go outside, she locked the doors, prompting the ex-boyfriend to scream and pound on her door. *Id.* In response, the woman retrieved a revolver from the bedroom and called the police. *Id.* Once the police arrived, she opened her door in an attempt to inform the police she was the caller, but as she opened the door, it hit her hand, causing the gun to discharge and fatally wound one of the officers standing several feet away. *Id.* at 718. Darnell was convicted of involuntary manslaughter. *Id.* at 717.[14]

Finally, under the lower court's approach, the offense of assault on a public servant in Texas, defined as "intentionally, knowingly, or recklessly caus[ing] bodily injury to" a public servant, *see* TEX. PENAL CODE ANN. § 22.01(a)(1), (b)(1), would be a qualifying ACCA predicate offense. But one need not have the makings of a career criminal to violate this statute, as can be attested to by Officer David Lee Seaton, who was convicted of this offense when he caused a car crash that injured another police officer while he was

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[14] Darnell's conviction was overturned because the trial court gave an improper instruction to the jury, but the court rejected Darnell's argument that there was legally insufficient evidence to convict her. 370 S.E.2d at 721.

speeding to the scene of a crime without his emergency lights and sirens on. *Seaton v. State*, 385 S.W.3d 85, 88 (Tex. Ct. App. 2012).

All of these crimes show a high disregard for risk, *Begay*, 553 U.S. at 146, but such individuals are not the violent "career offenders" Congress intended to punish. *Taylor v. United States*, 495 U.S. 575, 587 (1990); *see also id.* at 583 (noting that Congress was focused on the "small number of career offenders" who commit a "large proportion of [violent] crimes"). And yet, under the Sixth Circuit's holding, acts of self-defense, hunting mishaps, and the sale of alcohol to minors would count as violent felonies. This approach is inconsistent with the text and purpose of the ACCA.

D. These Examples Illustrate Why Crimes With a *Mens Rea* of Recklessness Are Not Violent Felonies Under the ACCA.

As the preceding sections illustrate, the Sixth Circuit's interpretation of Section 924(e)(2)(B)(i) would expand the number of crimes that qualify as violent felonies under the ACCA's force clause, contravening the statute's text and purpose. Indeed, the Sixth Circuit's interpretation would brand "run-of-the-mill" crimes, *Voisine*, 136 S. Ct. at 2278, like reckless driving offenses and tragic hunting incidents, as violent felonies. This expansive interpretation could lead to more offenders being eligible for the ACCA's harsh 15-year mandatory minimum. This Court should reject that interpretation and hold that crimes that require a mental state of recklessness are not violent felonies under the ACCA.

The text of the ACCA's force clause states that crimes that require, as an element, the use of force

against the person of another are violent felonies. Individuals who commit a crime with a reckless mental state do not "consciously desire [the] application [of force]" against another; instead, individuals who act recklessly are "*indifferent* . . . to the substantial possibility that [their] force will apply to the person of another." *United States v. Harper*, 875 F.3d 329, 332 (6th Cir. 2017). This is true of the person who falls asleep at the wheel and causes a crash, N.J. STAT. ANN. § 2C:11-5, or sells alcohol to minors who later cause a fatal car collision, *Hambright*, 426 S.E.2d at 807. The Court should reject an interpretation that would sweep broadly under case law holding that even indirect uses of force qualify as violent felonies. *Castleman*, 572 U.S. at 171; *see also Verwiebe*, 874 F.3d at 261 ("A defendant uses physical force whenever his volitional act sets into motion a series of events that results in the application of a 'force capable of causing physical pain or injury to another person.'").

In addition to ignoring the text of the ACCA, the court of appeals' interpretation also alters the purpose and scope of the ACCA by categorizing garden variety crimes as violent felonies. If the decision below is allowed to stand, individuals who recklessly swing their fist in frustration after a contentious penalty call during a sporting event, DEL. CODE ANN tit. 11, § 614, or tragically shoot their hunting companion, *Chapman*, 467 S.E.2d at 498, could be exposed to the ACCA's 15-year mandatory minimum sentence if they later simply possess a firearm, or even just ammunition. But these individuals are not the type of criminals the ACCA was meant to punish: career, repeat offenders who "commit a large number of fairly serious crimes as their means of livelihood." *Taylor*, 495 U.S. at 587. Nor are these crimes "quintessential violent crimes" that "involve the intentional use of . . . force against

another's person." *Oyebanji*, 418 F.3d at 264 (Alito, J.); *see also Leocal*, 543 U.S. at 11 (explaining that substantially identical statute was meant to target "violent, active crimes").

In short, the effect of the Sixth Circuit's interpretation would be to increase the number of offenders eligible for the ACCA's mandatory minimum sentence by stretching the Act's text and distorting its purpose, and that, in turn, exacerbates the deleterious impact of mandatory minimums. Long mandatory minimum sentences have a number of negative consequences: they increase the difficulty of reentry into the community, Andrew D. Leipold, *Is Mass Incarceration Inevitable?*, 56 AM. CRIM. L. REV. 1579, 1586 (2019); harm the well-being of children of the incarcerated, Eric Martin, *Hidden Consequences: The Impact of Incarceration on Dependent Children*, 278 NAT'L INST. JUST. 10, 10–16 (2017); and increase recidivism, Michael Tonry, *Less Imprisonment Is No Doubt a Good Thing, More Policing Is Not*, 10 CRIMINOLOGY & PUB. POL'Y 137, 137–38 (2011). Given the scope of these harmful consequences, the Sixth Circuit's broad reading of the force clause should be rejected because "[i]f Congress wanted to sweep in all reckless conduct," it would have said so explicitly. *See Voisine*, 136 S. Ct. at 2290 (Thomas, J., joined by Sotomayor, J., dissenting).

In sum, this Court should hold that crimes that can be committed with a *mens rea* of recklessness cannot satisfy the ACCA's force clause, not only because that interpretation is consistent with the text, history, and purpose of the statute, but also to prevent the unintended and unnecessary application of harsh mandatory minimum sentences against a broad class of incautious, but not incorrigible, offenders.

CONCLUSION

For the reasons stated above and in petitioner's brief, the judgment of the court of appeals should be reversed.

Respectfully submitted.

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