No. 20-5279

IN THE

Supreme Court of the United States

WILLIAM DALE WOODEN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

BRIEF OF THE RODERICK & SOLANGE MACARTHUR JUSTICE CENTER AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

The MacArthur Justice Center ("MJC") is a not-for-profit organization founded by the family of J. Roderick MacArthur to advocate for civil rights and a fair and humane criminal justice system. MJC has

[1] No counsel for a party authored this brief in whole or in part, and no counsel for a party (nor a party itself) made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amicus or its counsel made a monetary contribution to its preparation or submission. Both parties have consented to the filing of this brief.

represented clients facing myriad civil rights injustices, including issues concerning unlawful and draconian sentencing, unlawful confinement, and the treatment of incarcerated people.

MJC has an interest in the sound and fair administration of the criminal justice system. *Amicus* submits this brief to highlight that the court of appeals's interpretation of the Armed Career Criminal Act (ACCA) would put that statute at odds with another "occasions" clause Congress enacted at the same time, and would undermine the goals of the ACCA and the broader Comprehensive Crime Control Act, of which the ACCA was a part. This Court should make clear that each of petitioner's ministorage burglaries, undertaken on the same night, were not conducted on different "occasions" under 18 U.S.C. § 924(e)(1).

SUMMARY OF ARGUMENT

The court of appeals's interpretation of the "occasions" clause in the Armed Career Criminal Act (ACCA), which sweeps in the "one-day career criminal" like petitioner, is incoherent and wrong for all the reasons set out by petitioner. *Amicus curiae* focuses here on two additional fundamental flaws with the simultaneity test the court of appeals adopted.

1. The court of appeals's interpretation of the "occasions" clause violates the presumption of consistent usage. The ACCA was passed as part of the Comprehensive Crime Control Act (CCCA). In another part of the CCCA, Congress created the United States Sentencing Commission, and required the Commission to establish Sentencing Guidelines that enhanced sentences for defendants with two or more prior convictions "for offenses committed on different occasions." 28 U.S.C. § 994(i)(1). The Commission, to which Congress delegated its legislative powers in making sentencing policy and which receives substantial deference, has determined that *this* "occasions" clause—with materially identical language as in the ACCA—requires each "occasion" to come from an unrelated case.

2. The court of appeals's interpretation of the "occasions" clause in the ACCA is also badly out-of-whack with Congress's stated goal in the ACCA and the broader CCCA: to advance uniformity in sentencing. The simultaneity rule actually *undermines*, rather than serves, that goal, due to the many types of anomalies and absurdities it creates. As a result, the CCCA's other penological goals—of deterrence and incapacitation—go out the window too. The test sweeps up too many people, and results in an inconsistent and

almost random application of the ACCA enhancement, meaning it can't serve as a useful deterrent and risks incapacitating the undeserving: those who happen to break into a few adjoining ministorage units, as opposed to one large warehouse, not those who have truly made a career out of crime.

ARGUMENT

I. The Court of Appeals's Interpretation of the "Occasions" Clause Violates the Presumption of Consistent Usage.

The court of appeals's interpretation of "occasions" in the Armed Career Criminal Act (ACCA) contravenes the "presumption of consistent usage" in the Comprehensive Crime Control Act (CCCA), of which the ACCA was part. *See IBP, Inc. v. Alvarez*, 546 U.S. 21, 33-34 (2005). The presumption of consistent usage dictates that the same words used within a statute mean the same thing, and "the presumption is most commonly applied to terms appearing in the same enactment"—like the ACCA and other parts of the CCCA. *United States v. Castleman*, 572 U.S. 157, 174 (2014) (Scalia, J., concurring).

In Chapter II of the CCCA, Congress created the Sentencing Commission, and required the Commission to, among other things, establish Sentencing Guidelines that "assure . . . a substantial term of imprisonment" for defendants with "a history of two or more prior . . . felony convictions for offenses committed on different occasions." Pub. L. No. 98-473, § 217 (1984) (codified at 28 U.S.C. § 994(i)(1)). The Commission determined that *this* "occasions" clause—with materially identical language to that used in the

ACCA—means something very different from the court of appeals's interpretation.

From the outset, the resulting Sentencing Guidelines implementing Congress's directive in § 994(i)(1) has required that "[p]rior sentences imposed in unrelated cases are to be counted separately," while "[p]rior sentences imposed in related cases are to be treated as one sentence for purposes of the criminal history." U.S. SENTENCING GUIDELINES MANUAL § 4A1.2(a)(2) (1987); *see also* James E. Hooper, Note, *Bright Lines, Dark Deeds: Counting Convictions Under the Armed Career Criminal Act*, 89 MICH. L. REV. 1951, 1980 (1991). The Commission defined "related" as (1) occurring on a "single occasion;" (2) part of a "common scheme or plan;" or (3) "consolidated for trial or sentencing." U.S. SENTENCING GUIDELINES MANUAL § 4A1.2 cmt. n.3 (1987).

The Commission then moved even further away from the court of appeals's conception of "occasions," making it more difficult for convictions stemming from a single day (or night) of crime to be counted separately. The Commission undertook extensive study of the issue in 2006 and 2007, including "round-table discussions to receive input . . . from federal judges, prosecutors, defense attorneys, probation officers, and members of academia," as well as gathering "information through its training programs, the public comment process, and comments received during a public hearing." Sentencing Guidelines for the United States Courts, 72 Fed. Reg. 28,558, 28,575 (May 21, 2007). As a result of this process, the Commission updated the Guidelines to generally require that prior convictions be separated by an intervening arrest to count

as multiple offenses for the purposes of calculating criminal history. *Id.* at 28,576. Absent an intervening arrest, offenses are treated together unless they resulted from different charging instruments or the defendant was sentenced for the offenses on different days. *Id.* Congress then ratified those guidelines. *See* U.S. SENTENCING GUIDELINES MANUAL ch. 1, pt. A, subpt. 1(2) (2018) (describing congressional ratification process, whereby guidelines automatically take effect 180 days after submission to Congress, absent a law to the contrary). Under the Guidelines' interpretation of the "occasions" clause in § 994(i)(1), then, defendants like petitioner—with multiple convictions stemming from crimes committed on the same night, without any intervening arrest or imprisonment, and for which they were sentenced on the same day—have those convictions counted together, not separately.

Concrete examples abound. In *Molina-Martinez v. United States*, 136 S. Ct. 1338 (2016), for instance, this Court held that it was plain error for the district court to calculate a defendant's guidelines range by counting five aggravated burglary convictions, which were not separated by an intervening arrest and for which he had been sentenced on the same day, separately. *Id.* at 1344, 1348-49. And just two weeks ago, the Eleventh Circuit held that a district court plainly erred in relying on a presentence investigation report that counted two marijuana offenses separately, even though the offenses were not separated by an intervening arrest and the defendant was sentenced for both on the same day. *United States v. Hines*, No. 19-13806, 2021 WL 1610232, at *1-3 (11th Cir. Apr. 26, 2021). Indeed, the government has *conceded* that it is

plain error for a district court to count two crimes separately in such a circumstance. *United States v. Griffin*¸ 763 F. App'x 782, 785 (10th Cir. 2019); *see also United States v. Wilson*, 832 F. App'x. 147, 150, 152 (4th Cir. 2020) (holding district court erred where the defendant's convictions for possession of marijuana and a firearm were treated as separate offenses, "since the[sentences] were 'imposed on the same day' with 'no intervening arrest'").

In short, the court of appeals's interpretation of the "occasions" clause here runs contrary to the Guidelines' treatment of a materially identical statutory phrase. It is thus also contrary to the judgment of the Commission, the body to which Congress delegated its legislative powers in making sentencing determinations, *see, e.g.*, *Stinson v. United States*, 508 U.S. 36, 44-45 (1993); *Mistretta v. United States*, 488 U.S. 361, 371 (1989), and which receives great deference when effectuating sentencing policy, *see Kimbrough v. United States*, 552 U.S. 85, 108 (2007) ("Congress established the Commission to formulate and constantly refine national sentencing standards."). Under the canon of consistent usage, this Court should interpret "occasions" as the Commission has done, and make clear one-day offenders like petitioner have not committed offenses "on occasions different from one another."

II. The Court of Appeals's Interpretation of the "Occasions" Clause Undermines and the Goals of the ACCA and the Broader Comprehensive Crime Control Act.

1. The court of appeals's interpretation of the "occasions" clause in the ACCA is badly out-of-whack with Congress's stated goal in the ACCA and the broader CCCA: to advance uniformity in sentencing.

For instance, one piece of the CCCA created the United States Sentencing Commission and a series of mandatory minimum sentences, specifically "to reduce unwarranted disparity" in and "increase certainty and uniformity" in federal sentencing. U.S. Sentencing Comm'n, Mandatory Minimum Penalties in the Criminal Justice System, at i (1991) (hereinafter "Mandatory Minimum Report").[2] Congress wanted uniform sentences "so that similar defendants convicted of similar offenses would receive similar sentences." *Id.* at 17.[3]

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[2] Available at: https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/mandatory-minimum-penalties/1991_Mand_Min_Report.pdf.

[3] Of course, Congress's methods of achieving this uniformity goal has been much-criticized. *See, e.g.*, Mandatory Minimum Report at ii (noting, among other problems, disparate application of mandatory minimum sentences based on race; that mandatory minimums create *unwarranted* uniformity—that is, uniformity between individuals who are *not* similarly-situated; and that mandatory minimums increase sentencing severity, but not certainty); Rachel E. Barkow, Comment, *Categorical Mistakes: The Flawed Framework of the Armed Career Criminal Act and Mandatory Minimum Sentencing*, 133 HARV. L. REV. 200, 201-02 (2019) (criticizing the ACCA and mandatory minimums, noting "mistaken assumptions and premises" meant "Congress's approach for achieving [its stated] goals was doomed to fail").

The court of appeals's interpretation of the "occasions" clause *undermines*, as opposed to serves, that goal of uniformity. Petitioner's brief describes the many types of anomalies and absurdities created by the simultaneity test, resulting in a scheme under which "details that are otherwise meaningless in the underlying prosecutions end up producing outside consequences for federal defendants sentenced years or decades later." Pet'r's Br. at 37; *see also generally id.* 37-43. For example, arbitrary distinctions—such as whether the crime is a "point-in-time" offense like battery or a "continuing" offense like kidnapping become outcome-determinative in assessing whether a crime counts as an ACCA predicate. *Id.* at 38. This is, to put it mildly, the opposite of uniformity. *Cf.* Mandatory Minimum Report, at ii (noting "uneven application" of mandatory minimums "dramatically reduce[s] certainty" in sentences).

2. Because the court of appeals's interpretation of the "occasions" clause decreases uniformity in sentencing, the CCCA's other penological goals go out the window too. When Congress passed the ACCA and the CCCA, it was concerned with incapacitation and deterrence.[4] But only for those relative few who had made it their *career* to keep offending. *See* 134 CONG.

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[4] *See, e.g.*, Barkow, 133 HARV. L. REV. at 219 (identifying deterrence and incapacitation as the ACCA's goals); S. REP. NO. 98-190, at 9 (1983) (stating that the goal of the legislation was "to incapacitate the armed career criminal for the rest of the normal time span of his career"); S. REP. NO. 97-585, at 7 (1982) (goal of the fifteen-year mandatory minimum was "to incapacitate the armed career criminal for the rest of the normal time span of his career which usually starts at about age 15 and continues to about age 30"); *Id.* at 8 (predicting the ACCA "will have a substantial deterrent effect").

REC. 15,806-07 (1988) (statement of Sen. Specter) (describing the ACCA's goal: "to incarcerate unrehabilitative repeat violent felons"); *Armed Robbery and Burglary Prevention Act: Hearing on H.R. 6386 Before the Subcomm. on Crime of the H. Comm. on the Judiciary*, 97th Cong. 11 (1982) (statement of Rep. Ron Wyden) (describing the law as applying to "several hundred" people). The court of appeals's interpretation of the "occasions" clause sweeps up too many people, and results in an inconsistent and almost random application of the ACCA enhancement, meaning it can't serve as a useful deterrent—either generally or specifically—and risks incapacitating the undeserving. *See* Mandatory Minimum Report, at ii (noting deterrence "is dependent on certainty").

Even worse, the rule actually undermines the ACCA and CCCA's deterrence and incapacitation goals. It *incentivizes*, rather than discourages, worse criminal acts. Petitioner notes that the rule means offenders are encouraged to keep crimes going for longer (because, for example, taking a kidnapping victim along to the next crime means the crimes would be on the same "occasion" and only count as a single predicate), Pet'r's Br. at 39, and commit crimes with accomplices (because if you commit a crime with accomplices it's more difficult to draw a line between when one crime ends and another begins), *id.* at 40-43. And the topsy-turvy applications of the "occasions" clause petitioner cites—where its application depends on totally irrelevant facts, like ownership of the places that are burgled, *id.* at 40—means that people are being sent away for drastically different sentences for essentially the same crime, turning incapacitation into a coin flip. The rule thus leads to "'randomized draconianism,' . . . where we trade certainty for severity,"

which is "contrary to all the literature on what works for deterrence." Rachel E. Barkow, Comment, *Categorical Mistakes: The Flawed Framework of the Armed Career Criminal Act and Mandatory Minimum Sentencing*, 133 HARV. L. REV. 200, 220-21 (2019).

In short, because it leads to disuniformity, the court of appeals's test undermines deterrence, which depends on treating like cases alike. And although it may still incapacitate people, that incapacitation is not aimed at those who have truly made a career out of crime, but rather those who happen to break into a few adjoining ministorage units, rather than one large warehouse.

CONCLUSION

For the reasons stated above and in the brief of Petitioner, this Court should reverse.

Respectfully submitted,

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