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 HUMAN RIGHTS FOR KIDS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

Human Rights for Kids (HRFK) is a non-profit organization dedicated to the promotion and protection of the human rights of children. We incorporate research and public education, coalition building and grassroots mobilization, as well as policy advocacy and strategic litigation, to advance critical human rights on behalf of children. A central focus of our work is advocating in state legislatures and courts for comprehensive justice reform for children consistent with the U.N. Convention on the Rights of the Child and the International Covenant on Civil and Political Rights.

[1] No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amici curiae or their counsel made a monetary contribution to its preparation or submission. Each party consented to the filing of this brief in accordance with Supreme Court Rule 37.3.

SUMMARY OF ARGUMENT

The Sixth Circuit's overly expansive interpretation of the Armed Career Criminal Act ("ACCA" or the "Act") mandates disproportional and unconstitutional punishment of juvenile offenders in violation of the Eighth Amendment. ACCA's sentencing enhancement provision explicitly applies to children and includes certain juvenile delinquency adjudications as qualifying predicates for imposition of its mandatory minimum sentencing requirement. The Sixth Circuit's broad construction of the "different occasions" language of the Act sweeps even more juvenile conduct into ACCA's domain further compromising the ability of the sentencer to consider the infirmities of youth and impose a constitutionally proportional sentence. In expanding the reach of ACCA beyond the intent of Congress, the Sixth Circuit paves the way for excessive and potentially unconstitutional sentences for child offenders. This erroneous interpretation presents an unacceptable risk of inflicting permanent, debilitating sentencing consequences on children that lack any legitimate penological justification and is thus inconsistent with this Court's prior rulings that children are different from adults and these differences neccissitate heightened constituitonal protections.

This Court has examined the parameters of juvenile culpability on multiple occasions, consistently holding that kids cannot be held accountable according to adult standards because of their underdeveloped brains. The Court has repeatedly reaffirmed, as recently as this year, that the circumstances leading to juvenile crime are

transient, not permanent, and as such are inconsistent with designation of a child as an "irredeemable, career criminal." Constitutionally acceptable juvenile sentencing instead requires consideration of all the mitigating factors associated with youth in general, as well as the specific situation of the offender, with rehabilitation as the primary goal.

The Sixth Circuit's expansive interpretation of ACCA, however, contravenes this directive as it would result in even more children entering adulthood permanently branded as career criminals, solely as a result of conduct precipitated by their still developing brains. Tragically, the consequences of this fleeting state of neurophysiological development, over which they have no control and which they will outgrow, will persist, relegating them to an adult life of diminished opportunities at best, and incontestible felonious status, at worst.

Under the Sixth Circuit's reading of ACCA's "different occasions" language, circumstances this Court has previously described as transient will instead become a permanent albatross around a child's neck. A child who exercises poor judgement or succombs to peer pressure as a result of cognitive immaturity, or who has been subject to abuse and neglect, risks being deemed a career criminal in direct contradiction to what Congress intended. Adopting the Sixth Circuit's interpretation of the Act would greatly increase the likelihood of an individual qualifying for an enhancement under the Act *even before* reaching adulthood. This additional stripping of sentencers' discretion to consider the actual

circumstances triggering offenses committed by kids undermines the rehabilitation goal of this Court's juvenile sentencing precedent.

By allowing sequential actions ocurring on a single night, at a single location, and in furtherance of a single criminal opportunity, to morph into "career criminal" status, the Sixth Circuit has directly contradicted the plain language and purpose of ACCA. The effects of this interpretation are magnified when children are involved. The statute was intended to protect the public against hardened, veteran criminals, not children, regardless of the severity of the crimes they have committed during one day or night of intemperate behavior. Equating an individual's poor decision-making on a single night with perpetual and irredeemable criminality is unjustified when applied to adults, and unconscionable when applied to children.

ARGUMENT

I. AN EXPANSIVE INTERPRETATION OF THE ARMED CAREER CRIMINAL ACT WOULD BE ESPECIALLY HARMFUL TO CHILD OFFENDERS.

Currently, some circuits, including the Sixth, apply an unjustifiably expansive test to determine whether previous offenses meet the "different occasions" requirement of ACCA. This interpretation is particularly harmful when applied to children in subjecting even more of them to imposition of ACCA's mandatory 15-year sentencing enhancement provision than the more common sense reading of the phrase entails. The enhancement would be triggered by convictions for multiple offenses, as well as certain juvenile delinquency determinations, even when the prior transgressions were committed as part of the same criminal opportunity, conspiracy or spree.[2] Given the often impulsive behavior of children, especially adolescents, resulting from their under-developed brains, this analysis could result in child offenders becoming career criminals based solely on *one night's* improvident conduct.[3]

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[2] *See, e.g., United States v. Longoria*, 874 F.3d 1278 (11th Cir. 2017) (finding Adam Longoria was a career criminal based on two sales of controlled substances and one count of conspiracy related to the sales).

[3] *United States v. Chappel*, 801 Fed. App'x 379, 383 (6th Cir. 2020); *see also United States v. Moody*, 770 F.3d 577, 580 (7th Cir. 2014) (citing *Shepard v. United States*, 544 U.S. 13, 15–17 (2005)); *United States v. Keesee*, 358 F.3d 1217, 1221 (9th Cir. 2004) (finding there is no recency requirement and "[t]he only

A. Under the Sixth Circuit's Interpretation of the Statute, Minor Offenders Will Enter Adulthood as Career Criminals.

ACCA does not allow for consideration of the infirmities of youth in its application of mandatory sentence enhancements. ACCA further includes juvenile adjudications as qualifying offenses, explicitly including in the definition of a conviction, "a finding that a person has committed an act of juvenile delinquency involving a violent felony."[4]

ACCA's definition of a violent felony further includes an "act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by over one year of imprisonment if committed by an adult."[5] There is "no authority to ignore [an otherwise qualified] conviction because of its age or its underlying circumstances. Such considerations are irrelevant . . . under the Act."[6] ACCA has, in fact, been applied in cases where all of the predicate offenses were committed by a juvenile offender.[7]

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time limitation supported by the language of the Armed Career Criminal Act is that the predicate convictions be 'previous.'").

[4] 18 U.S.C. § 924(e)(2)(C).

[5] 18 U.S.C. § 924(e)(2).

[6] *United States v. Moody*, 770 F.3d 577, 580 (7th Cir. 2014) (citing *Shepard v. United States*, 544 U.S. 13, 15–17 (2005)); *see also United States v. Keesee*, 358 F.3d 1217, 1221 (9th Cir. 2004) ("The only time limitation supported by the language of the Armed Career Criminal Act is that the predicate convictions be 'previous.'").

[7] *See United States v. Chappel*, 801 Fed. App'x 379, 383 (6th Cir. 2020) (finding the application of ACCA permissible under the

One night of adolescent indiscretion or peer-prompted over-indulgence can thus result in designation as a career criminal *for life*, eliminating the possibility of rehabilitation, growth, and maturity, all of which are the empirically demonstrated attributes of brain development from childhood through adulthood. ACCA prohibits lower courts from considering factors that have been deemed critical by this Court in its Eighth Amendment jurisprudence when sentencing individuals whose predicate offenses accrued as juveniles. Adoption of the Sixth Circuit's expansive interpretation of ACCA's "different occasions" requirement will exacerbate this situation leading to extremely harsh sentences for even greater numbers of minors who will be unjustifiably designated as "career criminals."

An estimated 76,000 children are prosecuted in the adult criminal justice system every year in the United States.[8] It is difficult, however, to estimate with any degree of certainty how many individuals are currently incarcerated for crimes they committed as children.[9] As of June 27, 2020, data from the U.S. Sentencing Commission revealed that there were 437

Eighth Amendment where the defendant had a long rap sheet, including the predicate offenses, all committed as a juvenile).

[8] *See* Charles Puzzanchera, et al., *Youth Younger than 18 Prosecuted in Criminal Court: National Estimate, 2015 Cases*, Nat'l Center for Juvenile Justice (2018), *available at*, http://www.cfyj.org/images/Transfer-estimate.pdf (last accessed May 9, 2021).

[9] This data is not readily accessible though there is pending legislation that would require this information to be maintained. *See* H.R. 2908, 117th Congress (2021).

offenders in BOP custody who had been sentenced to 20 years or longer who were under the age of 21 at the time of sentencing.[10]

Even in the absence of precise numbers of potentially affected individuals, the Sixth Circuit's interpretation raises serious concerns about how ACCA could be applied to child offenders. The Act explicitly allows for prior adjudications in juvenile court, as well as prior convictions in adult criminal court, to count as predicate offenses.[11] This raises a myriad of additional concerns for child offenders, not the least of which is that Texas, Wisconsin, and Georgia exclude 17 year-olds from juvenile court altogether.[12] The practical implication of the practices of these outlier jurisdictions is that an unarmed 17 year old who burglarizes 10 storage units at the same storage facility in the same evening would not be eligible for an ACCA enhancement in 47 states, but under the interpretation of the Sixth Circuit, would be so eligible in the states that exclude 17 year olds from juvenile court.[13]

This is just the beginning of what such an erroneous interpretation of ACCA would mean for child offenders. Another example of how such an

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[10] U.S. Sentencing Commission data request.

[11] 18 U.S.C. § 924(e).

[12] 2020 State Ratings Report on Human Rights Protections for Children in the U.S. Justice System, 10, *available at*, https://humanrightsforkids.org/wp-content/uploads/State-Ratings-Report_2020.pdf (last accessed May 9, 2021).

[13] *Id.*; *see also United States. v. Lender*, 985 F.2d 151 (4th Cir. 1993).

interpretation could trigger harsh mandatory minimums for kids is that of Zyion Houston-Sconiers who was 17 years old when he committed offenses in Washington State that led to six convictions of robbery in the first degree when he and another youth robbed several other children of their Halloween candy on Halloween night in 2012.[14] Similarly, 15-year-old Travion Blount was convicted of 49 felonies arising from his role in the robbery of 12 people at a house party in Norfolk, Virginia, in 2008.[15]

The multiple convictions arising from these single criminal opportunities underscore why the Sixth Circuit's interpretation would be particularly harmful to child offenders. The construction of ACCA applied by the Sixth Circuit and other courts affords juveniles like Mr. Houston-Sconiers and Mr. Blount with no opportunity to learn from a single night's mistakes before carrying the permanent designation of a career criminal. In the event that a child is convicted of multiple charges stemming from a single incident, as in the case of the Petitioner, he or she could face the prospect of being branded a career criminal and subject to the harsh mandatory minimum sentence that accompanies such a designation, an outcome that is clearly at odds with this Court's jurisprudence and the intent of Congress.

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[14] *State v. Houston-Sconiers*, 188 Wash. 2d 1 (Wash. 2017).
[15] *Blount v. Clarke*, 890 F.3d 456 (4th Cir. 2018).

B. This Court Has Long Recognized that the Decisions of Child Offenders Are Not Indicative of "Career Criminal" Status.

In broadening the class of "career criminals" who accrued their ACCA predicate offenses while they were children, a result ACCA explicitly condones,[16] the Sixth Circuit's expansive reading of the statute's "different occasions" language contravenes this Court's juvenile sentencing doctrine. Despite this Court's evolving jurisprudence adopting empirical research demonstrating that children's brains are not fully developed, particularly as it relates to risk assessment and judgement, adoption of the Sixth Circuit's construction of ACCA would increase the pool of children whose hotheaded behavior on a single night saddles them with the sentencing "scarlet letter" of an ACCA enhancement. This result contravenes this Court's Eighth Amendment juvenile sentencing analysis which views rehabilitation, as opposed to incapacitation, deterrence or retribution, as the primary objective to be achieved in sentencing children.

This Court's precedents have long recognized that children's decision-making leading to criminal conduct simply cannot be viewed in the same light as similar adult conduct. Youth is not a mere "chronological fact," but "a time and condition of life when a person may be most susceptible to influence and to psychological damage."[17] This notion is reflected in a broad array of societal mores limiting

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[16] 18 U.S.C. § 924(e)(2)(C).

[17] *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982).

the freedom and choices of children precisely because they lack the maturity of adults. Unlike adults, children are deemed insufficiently mature and capable of rational judgment to vote, marry without parental consent, sit on a jury, or purchase alcohol or tobacco, and none of those prohibitions are viewed as being particularly controversial.[18] Moreover, this Court's precedents have applied the concept broadly to an array of life activities.[19]

In the criminal sentencing context, this Court's modern precedents first addressed the maturity and decision-making of minor children in *Eddings v. Oklahoma*,[20] holding that a minor child must be permitted to present evidence of abuse and neglect by his parents in death penalty sentencing proceedings. Justice Powell noted that "[e]ven the normal 16-year-old customarily lacks the maturity of an adult."[21] This Court next addressed the subject in *Thompson v. Oklahoma*,[22] holding that the death penalty may not be imposed upon defendants who were under the age of 16 at the time of their criminal conduct. The Court grounded its decision in the social science consensus that "[i]nexperience, less education, and less

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[18] *Thompson v. Oklahoma*, 487 U.S. 815, 823 (1988).

[19] *See Bellotti v. Baird*, 443 U.S. 622, 635 (1979) (upholding parental consent requirement for abortion); *Ginsberg v. New York*, 390 U.S. 629, 638–39 (1968) (affirming conviction for distributing non-obscene sexually oriented magazine to child, even though conviction would have been infirm as to distribution to an adult); *Prince v. Massachusetts*, 321 U.S. 158, 169 (1944) (upholding child labor prohibition notwithstanding child's sincere religious desire to sell leaflets).

[20] 455 U.S. at 116.

[21] *Id.*

[22] 487 U.S. 815 (1988).

intelligence make the teenager less able to evaluate the consequences of his or her conduct while at the same time he or she is much more apt to be motivated by mere emotion or peer pressure than is an adult."[23]

Nearly two decades after *Thompson*, the Court continued its line of juvenile sentencing doctrine in *Roper v. Simmons*,[24] holding that the Eighth and Fourteenth Amendments bar the execution of defendants who were under 18 years of age at the time of their crime. The Court identified three differences between adults and children that "demonstrate that juvenile offenders cannot with reliability be classified among the worst offenders."[25] First, the Court explained that a "lack of maturity and underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the youth," resulting in "impetuous and ill-considered actions and decisions."[26] Second, the Court noted that children "are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure."[27] Third, and most critically in the context of ACCA's sentencing enhancement provision targeting irredeemable, "career criminals," the Court found that "the character of a juvenile is not as well formed as that of an adult" with "more transitory, less fixed" personality traits.[28]

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[23] *Id.* at 835.
[24] 543 U.S. 551 (2005).
[25] *Id.* at 569.
[26] *Id.* (quoting *Johnson v. Texas*, 509 U.S. 350, 367 (1993)).
[27] *Id.*
[28] *Id.* at 570.

The Court found that these three differences "render suspect any conclusion that a juvenile falls among the worst offenders" and make it "less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character."[29] Because "the signature qualities of youth are transient," "a greater possibility exists that a minor's character deficiencies will be reformed" and "only a relatively small proportion of adolescents who experiment in risky or illegal activities develop entrenched patterns of problem behavior that persist into adulthood."[30] The Court further noted that the Diagnostic and Statistical Manual of Mental Disorders prohibited psychiatrists from diagnosing juvenile patients with antisocial personality disorder - which has many symptoms consistent with career criminal status - because of the transient nature of juvenile brains and personalities.[31]

This Court next decided *Graham v. Florida*,[32] holding that the Eighth Amendment prohibits the imposition of life without parole sentences for juvenile, non-homicide offenders. The *Graham* Court reaffirmed *Roper*'s rationale, embracing research on child brain development, included in submissions from the American Medical Association and American Psychological Association as *amici*, in finding that "developments in psychology and brain science continue to show fundamental differences between

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[29] *Id.*
[30] *Id.* (internal quotations omitted).
[31] *Id.* at 573.
[32] 560 U.S. 48 (2010).

juvenile and adult minds." [33] The Court held these findings undermined any penological justifications for a life without parole sentence, particularly the rationale of incapacitation. Quoting *Roper*, the Court held that "[i]t is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption."[34] The Court also relied upon the "special difficulties encountered by counsel in juvenile representation" with respect to juvenile clients characterized by reduced ability to weigh long-term consequences, impulsiveness, and a reluctance to trust defense counsel.[35]

In *Miller v. Alabama*,[36] the Court again relied on these innate attributes of childhood to hold that the Eighth Amendment bars mandatory life imprisonment without parole sentences for defendants who commit their crimes as children. Citing post-*Graham* psychological studies, the Court explained that "the science and social science supporting *Roper*'s and *Graham*'s conclusions have become even stronger."[37] In *Montgomery v. Louisiana*,[38] the Court held that *Miller*'s rule applied retroactively on state collateral review, again relying on the reasoning of *Roper* and *Graham*. Finally, just this year in *Jones v. Mississippi*,[39] the Court affirmed

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[33] *Id.* at 68.
[34] *Id.* at 73–73.
[35] *Id.* at 78–79.
[36] 567 U.S. 460 (2012).
[37] *Id.* at 472.
[38] 577 U.S. 190, 206–07 (2016).
[39] No. 18-1259, slip op. at 8, 593 U.S. __ (2021).

Miller and the underlying rationale on which it was based.[41]

Relying on current research into the development of the adolescent brain, there is a movement among state courts and state legislatures barring mandatory minimum sentences for child defendants regardless of the underlying offense.[40] At least two state supreme courts have issued rulings to prohibit mandatory minimum sentences for juvenile offenders.[41] State legislatures are also increasingly enacting juvenile sentencing reforms limiting, and even eliminating, the imposition of mandatory minimum sentences on children in recognition of their not fully developed neurophysiology.[42]

Although this case does rest upon an Eighth Amendment analysis, this Court's evolving line of precedent, concluding that youth matters in sentencing, adds special considerations when an

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[41] *Id.*

[40] Suzanne S. La Pierre & James Dold, *The Evolution of Decency: Why Mandatory Minimum and Presumptive Sentencing Schemes Violate the Eighth Amendment for Child Offenders*, 27:2 VA. J. SOC. POL'Y & L. 167, 176–84 (2020).

[41] *Houston-Sconiers*, 391 P.3d at 420 ("Trial courts must consider mitigating qualities of youth at sentencing and must have discretion to impose any sentence below the otherwise applicable [sentencing] range and/or sentence enhancements"); *State v. Lyle*, 854 N.W.2d 378, 399 (Iowa 2014) ("Rehabilitation and incapacitation *can* justify criminally punishing juveniles, but mandatory minimums do not further these objectives in a way that adequately protects the rights of juveniles within the context of the constitutional protection from the imposition of cruel and unusual punishment for a juvenile") (emphasis in original).

[42] *See* La Pierre & Dold, *supra* n.40, at 182–84.

erroneous interpretation broadens the scope of federal law to expose more child offenders to lengthy mandatory minimum sentences. The empirical research supporting the decades of relevant case law confirms that crimes committed by children are, in all but the rarest of cases, the product of a transient set of circumstances that do not reflect immutable characteristics of the child's identity or predict the child's future behavior. In conflict with this reality, the construction of ACCA adopted by the Sixth Circuit below would unjustifiably broaden the group of children deemed hardened, habitual offenders, incapable of rehabilitation, and thus deserving of ACCA's drastic mandatory sentencing enhancement, yet premised solely on a *single night* of brash behavior.

The empirically demonstrated differences between the child and adult brain "render suspect any conclusion that a juvenile falls among the *worst offenders*"[43] and thus could conceivably qualify as a "career criminal" under ACCA. The entire premise of ACCA's sentencing enhancement – of the "critical need to target the habitual offender [and] incarcerate unrehabilitative [*sic*] repeat violent felons for lengthy periods"[44] – is thus categorically inapplicable to juveniles, especially when the qualifying prior criminal conduct took place on a single occasion, as that term is commonly understood, and does not reflect "repeat" behavior in any sense of the term.

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[43] *Id.* (italics added)

[44] 134 Cong. Rec. 15,806–07 (1988) (statement of Sen. Specter).

This Court has found that "[a]n offender's age is relevant to the Eighth Amendment, and criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed."[45] Mandatory minimum sentences for juvenile offenders undermine the fundamental principle that the purpose of juvenile punishment is rehabilitation.[46] The *Miller* Court recognized the importance of considering the "mitigating qualities of youth.'"[47] In fact, the Court found that mitigating factors are *more relevant* in the cases of juvenile offenders than they are in the case of adults.[48] Unfortunately, ACCA was not worded with such considerations in mind as its focus was on the "worst of the worst." Thus, the statute's lack of sentencing discretion precludes consideration of age and all of the factors identified and deemed relevant in *Miller*. Accordingly, ACCA's breadth should not in turn be augmented by an overly expansive reading of the "different occasions" language as adopted by the Sixth Circuit.

Eight circuits apply the ACCA enhancement too broadly, finding it applicable when crimes are committed at different moments, even when committed sequentially at the same location and

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[45] *Graham*, 560 U.S. at 76. S*ee also, Johnson v. Texas*, 509 U.S. 350, 367 (1993) (holding that a jury was free to consider a 19-year-old defendant's youth when determining whether there was a probability that he would continue to commit violent acts in the future (quoting *Eddings v. Oklahoma*, 455 U.S. at 115).

[46] *See* La Pierre & Dold, *supra* note 40, at 175.

[47] *Miller*, 567 U.S. at 476 (quoting *Johnson v. Texas*, 509 U.S. 350, 367 (1993)).

[48] *Id.* at 476 (citing *Eddings v. Oklahoma*, 455 U.S. at 112).

during the same criminal opportunity.[49] Other circuits interpret the "occasions" language more in line with the common understanding of the concept and apply the enhancement only when crimes are committed under indisputably separate circumstances.[50] These courts "distinguish between the defendant who simply commits several offenses in a connected chain of events and the defendant who is targeted by ACCA—someone who commits multiple crimes separated by substantial effort and reflection."[51]

This Court's approach to sentencing children under the Eighth Amendment requires adoption of the latter courts' interpretation.[52] These Circuits correctly hold that where acts were "part of one criminal episode" the offender does "not meet the

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[49] *Carter*, 969 F.3d at 1243; *see also United States v. Schoolcraft*, 879 F.2d 64, 73 (3d Cir. 1989); *United States v. Fuller*, 453 F.3d 274, 278 (5th Cir. 2006) (whether offenses occurred sequentially is "[t]he critical inquiry"); *Morris*, 821 F.3d at 880; *United States v. Abbott*, 794 F.3d 896, 898 (8th Cir. 2015) ("[T]o prove that two offenses are sufficiently separate and distinct for ACCA purposes, it is sufficient . . . to show that some time elapsed between"); *United States v. Johnson*, 130 F.3d 1420, 1431 (10th Cir. 1997); *United States v. Thomas*, 572 F.3d 945, 951 (D.C. Cir. 2009); *United States v. Hill*, 440 F.3d 292, 297–98 (6th Cir. 2006).

[50] *United States v. Bordeaux*, 886 F.3d 189, 196 (2d Cir. 2018) (Cabranes, J.) (concluding that courts should "consider not only when a defendant committed different crimes, but also the other circumstances of the crimes"); *United States v. Tucker*, 603 F.3d 260, 263 (4th Cir. 2010); *United States v. Stearns*, 387 F.3d 104, 108 (1st Cir. 2004); *McElyea*, 158 F.3d at 1021.

[51] *Bordeaux*, 886 F.3d at 196.

[52] *See, e.g., Graham*, 560 U.S. 48.

profile of a career criminal envisioned by Congress."[53] Indeed, Congress did not envision thousands of children being punished for their entire lives based on imprudent decisions taken during the span of a single, foolhardy undertaking. The principles that underlie the Court's stated justification for juvenile sentencing require a narrow reading of the "different occasions" language of ACCA, so as to minimize the number of children denied consideration of the acknowledged infirmities of youth and maximize those afforded the opportunity for rehabilitation and redemption.

II. EXPANSIVE INTERPRETATION OF THE ARMED CAREER CRIMINAL ACT CONTRAVENES CONGRESSIONAL INTENT AND SHOULD BE NARROWED.

Under ACCA, a defendant convicted of possessing a firearm or ammunition in violation of federal law faces a significantly more severe punishment if he has three or more previous convictions for a "violent felony" or "serious drug offense," or both, "committed on occasions different from one another."[54] In the case below, this enhancement caused Mr. Wooden to face a mandatory minimum sentence of fifteen years in prison, approximately seven times his Sentencing Guidelines range of 21 to 27 months.

The Act defines a violent felony as a felony involving the "use of physical force" or burglary,

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[53] *McElyea*, 158 F.3d at 1021.
[54] 18 U.S.C. § 924(e).

arson, extortion, or one involving explosives.[55] The definition was previously more expansive, until this Court invalidated its residual clause in *Johnson v. United States* as confusing, unpredictable, uncertain, and a violation of the Constitutional guarantee of due process.[56] A serious drug offense is defined as certain offenses involving controlled substances with a maximum possible sentence of ten years or more.[57] Notwithstanding the "wide differences" between the juvenile and adult justice systems,[58] as previously discussed, the Act explicitly permits certain "finding[s] that a person has committed an act of juvenile delinquency" to serve as a predicate for the sentencing enhancement.[59]

While the Act defines which previous convictions to consider, it does not specify when these offenses are deemed to be "committed on occasions different from one another."[60] The determination of whether a previous conviction qualifies as a predicate offense and whether to apply ACCA's enhancement at all, as in the present case, often depends on whether this additional statutory requirement is met.[61]

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[55] 18 U.S.C. § 924(e)(2).
[56] *Johnson v. United States*, 576 U.S. 591, 606 (2015).
[57] 18 U.S.C. § 924(e)(2)(A).
[58] *In re Gault*, 387 U.S. 1, 15 (1967).
[59] 18 U.S.C. § 924(e)(2)(C).
[60] 18 U.S.C. § 924(e).
[61] *See, e.g., United States v. Wooden*, 945 F.3d 498, 504–06 (6th Cir. 2019).

A. ACCA was Only Intended to Apply to the Narrow Subset of Irredeemable Offenders Identified after Multiple Opportunities for Rehabilitation.

The legislation that would become ACCA was introduced in 1981 by Senator Arlen Specter, of Pennsylvania, a former district attorney.[62] At the time, there was a growing recognition that a large percentage of crime is committed by a very small percentage of repeat offenders.[63]

Ordinarily, conviction for unlawful possession of a firearm under 18 U.S.C. § 922(g) is subject to a sentence between zero to ten years.[64] Senator Specter proposed to mandate life imprisonment without the possibility of a suspended sentence for career criminals.[65] The final version of the Act mandated a sentence of fifteen years to life.[66] This sentencing enhancement is significant, as the mandatory *minimum* of fifteen years is *higher* than the *maximum* sentence without the enhancement.[67] The result is that sentences for convictions under § 922(g) from 2008 through 2012 without the ACCA enhancement averaged 46 months, compared to an

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[62] S. 1688, 97th Cong. (1981); *see also* 129 Cong. Rec. 22,669–72 (1981) (statement of Sen. Specter).

[63] *See* Comprehensive Crime Control Act of 1984, Pub. L. No. 98–473, 98 Stat. 1837, Title II, Ch. XVIII § 1801-03; H.R. Rep. No. 98-1073, at 1, as reprinted in 1984 U.S.C.C.A.N. 3661, 3661 [hereinafter "Comprehensive Crime Control Act"].

[64] 18 U.S.C. § 924(a)(2).

[65] S. 1688, 97th Cong. § 2 (1981).

[66] 18 U.S.C. § 924(e).

[67] 18 U.S.C. §§ 922(a)(2), 924(e).

average of 180 months with the ACCA enhancement.[68] In 2019, the average sentence with the ACCA enhancement was even higher at 206 months.[69] These extreme disparities demonstrate that the statute is not intended to punish the possession of a firearm *per se*, but to prevent future injury to others and remove offenders deemed irredeemable from the streets.

Senator Specter's motivation was "[t]he critical need to target the habitual offender . . . and the need to incarcerate unrehabilitative [sic] repeat violent felons for lengthy periods . . . [to] incapacitat[e] the truly dangerous criminal . . . It is my view that the only way to deal with such hardened criminals is with stiff prison terms with no prospect for parole."[70]

Attorney General Stephen Trott testified before the House Subcommittee on Crime that:

> These are people who have demonstrated . . . that locking them up and letting them go doesn't do any good.

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[68] *Quick Facts: Felon in Possession of a Firearm*, U.S. Sent'g Comm'n (2012) ,*available at,* https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Quick Facts Felon in Possession of_a_Firearm.pdf (last accessed May 9, 2021).

[69] *Federal Armed Career Criminals: Prevalence, Patterns, and Pathways*, U.S. Sent'g Comm'n 6 (March 2021), *available at,* https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2021/20210303_ACCA-Report.pdf (last accessed May 9, 2021).

[70] 134 Cong. Rec. 15,806–07 (1988) (statement of Sen. Specter) (based on the recommendation of the National Commission on Criminal Justice Standards and Goals).

> They go on again, you lock them up, you let them go, it doesn't do any good, they are back for a third time. At that juncture we should say, "That's it; time out; it is all over. We as responsible people, will never give you the opportunity to do this again."[71]

These individuals were "three-time losers" because they had foregone three prior opportunities to live as law-abiding members of society.[72] The goal to incapacitate repeat offenders through incarceration remains central to the Act today.[73]

Similarly, state habitual offender statutes are generally interpreted as requiring each successive felony to be committed after the previous conviction to count towards habitual criminal status.[74] Accordingly, two or more convictions on the same day, or on the same indictment, constitute only one conviction under most state laws similar to ACCA.[75]

The underlying rationale is that a habitual criminal statute serves "as a warning to first time offenders and provide[s] them with an opportunity to

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[71] Armed Career Criminal Act: Hearing on H.R. 1627 and S. 52 Before the Subcomm. on Crime of the House Comm. on the Judiciary, 98th Cong., 2d Sess. 6 (1984).

[72] H.R. Rep. No. 1073, 98th Cong., 2d Sess. 4, 5 (1984), U.S. Code Cong. Admin. News 1984, pp. 3182, 3664, 3665.

[73] *See, e.g.*, Federal Armed Career Criminals, *supra* at n.69, at 11.

[74] *See Ewing v. California*, 538 U.S. 11, 32–52 (2003) (Breyer, J., dissenting); *State v. Ellis*, 214 Neb. 172, 176 (1983) (collecting cases from various states).

[75] *Ellis*, 214 Neb. at 174–75.

reform. [S]anctions become increasingly severe 'not so much that [the] defendant has sinned more than once as that he is deemed incorrigible when he persists in violations of the law after conviction of previous infractions.'"[76] In other words, sentence enhancements are given only after "conviction and punishment have failed to reform."[77]

ACCA was drafted to apply only to "hard core . . . career criminals" and was "focus[ed] on the . . . very worst offenders with the worst records."[78] Unlike the case at hand, there are cases where ACCA has been appropriately applied to these sorts of "truly dangerous criminals" who have been given multiple chances for rehabilitation.[79]

B. The Act Requires a Narrow Interpretation of Temporal Separateness.

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[76] *Alaska v. Carlson*, 560 P.2d 26, 28–29 (Alaska 1977) (alterations in original) (quoting *Annotation, Chronological or Procedural Sequence of Former Convictions as Affecting Enhancement of Penalty for Subsequent Offense Under Habitual Criminal Statutes*, 24 A.L.R.2d 1247, 1249 (1952)).

[77] *Kansas v. Lohrbach*, 217 Kan. 588, 592–93 (1975) (holding that the trial court erred in sentencing defendant as habitual offender based on four prior felony convictions rendered on the same date).

[78] S. Rep. No. 97-585, at 62–63 (1982).

[79] *United States v. Bland*, 961 F.2d 123, 125, 129 (9th Cir. 1992) illustrates the type of individual to whom ACCA's sentencing enhancement was intended to apply. After thirteen violent felonies, twenty-three years in jail, and release following incarceration five times, the defendant fell clearly within Congress' intention for the Act, to protect the public from those individuals whose extensive criminal history appears incompatible with rehabilitation.

As originally enacted in 1984, ACCA had no express requirement that the defendant commit the predicate offenses on different occasions.[80] In 1988, Congress amended the Act by inserting the requirement that the predicate offenses be committed "on occasions different from one another."[81] Congress added this language to the statute after the Eighth Circuit held in *United States v. Petty* that an incident in which a defendant was convicted of six counts of robbery for simultaneously robbing six restaurant patrons during one "stick up" was sufficient to apply the ACCA enhancement.[82] The Solicitor General subsequently admitted error in applying the ACCA enhancements in the case, resulting in this Court's vacating the lower court's ruling. [83]

Congress added the qualifying phrase precisely to eliminate outcomes like that reached by the *Petty* Court in which one crime spree, generating multiple charges based on different conduct by a defendant, resulted in an ACCA sentence enhancement.[84] The addition of the "different occasions" requirement was

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[80] *See* Comprehensive Crime Control Act, *supra* at n.63.

[81] 18 U.S.C. § 924(e)(1); Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, § 7056, 102 Stat. 4181, 4402 (1988) (codified at 18 U.S.C. § 924(e)(1)) [hereinafter "Anti-Drug Abuse Act"]; *see also McElyea*, 158 F.3d at 1019–20.

[82] 798 F.2d 1157, 1159–60 (8th Cir. 1986), *vacated*, 481 U.S. 1034 (1987).

[83] *Id.*

[84] *See Hudspeth*, 42 F.3d at 1023 (finding crimes committed "simultaneously" should count as only one conviction) (quoting 134 Cong. Rec. S17,370 (daily ed. Nov. 10, 1988) (remarks of Sen. Biden)).

"intended to prevent counting simultaneous crimes separately."[85]

In the present case, Mr. Wooden was considered a career criminal due to ten counts of burglary in Georgia, occurring on the same date, at the same time, at the same address, and in the same manner at a mini-storage facility.[86] His conduct is not legally distinguishable from that of the defendant in *Petty,* whose erroneous decision was the acknowledged impetus for Congress amending ACCA to include the limiting provision.[87] Courts have a duty "to give effect, if possible, to *every clause* and word of a statute."[88] If this Court upholds the Sixth Circuit's interpretation of the Act, it would fail to give meaning to the "different occasions" clause added in 1988, a decision that could be most charitably characterized as demonstrating "that the legislature was ignorant of the meaning of the language it employed."[89]

To implement Congressional intent, and avoid creating career criminals based on criminal activity occurring in an uninterrupted chain of events, the "different occasions" language of ACCA must be given a narrow construction. ACCA was enacted to handle the small subset of especially dangerous criminals whose unrepentant conduct became apparent over time. Congress took a clear step after *Petty* to prevent

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[85] *United States v. Pope*, 132 F.3d 684, 692 (11th Cir. 1998).
[86] *Wooden*, 945 F.3d at 505.
[87] *See* Anti-Drug Abuse Act, *supra* at n.811; *McElyea*, 158 F.3d at 1019–20.
[88] *Montclair v. Ramsdell*, 107 U.S. 147, 152 (1882) (emphasis added).
[89] *Id.*

varying state interpretations of a single criminal opportunity, such as the situation presented in this case, from triggering application of ACCA's mandatory sentencing enhancement.

The rule applied by the Sixth Circuit in this case impermissibly expands ACCA's sentencing enhancement intended only for "repeat offenders," "revolving door offenders," "habitual offenders," "recidivists," and the "very worst offenders" who are beyond rehabilitation, to potentially ensnare individuals, including children, who have engaged in criminal activity solely on a single day or night of their lives.[90] This result eviscerates Congress' intent in enacting ACCA. It is manifestly unjust when applied to any defendant, but particularly odious when applied to children.

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[90] *See* discussion *supra* Sections I.A.–I.B.

CONCLUSION

For the foregoing reasons the Court should reverse the decision below.

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