

**22-6389 BROWN V. UNITED STATES**

DECISION BELOW: 47 F.4th 147

LOWER COURT CASE NUMBER: 21-1510

QUESTION PRESENTED:

The Armed Career Criminal Act provides that felons who possess a firearm are normally subject to a maximum 10-year sentence. But if the felon already has at least three "serious drug offense" convictions, then the *minimum* sentence is fifteen years.

Courts decide whether a prior state conviction counts as a serious drug offense using the categorical approach. That requires determining whether the elements of a state drug offense are the same as, or narrower than those of its federal counterpart. If so, the state conviction qualifies as an ACCA predicate.

But federal drug law often changes-as here, where Congress decriminalized hemp, narrowing the federal definition of marijuana. If state law doesn't follow suit, sentencing courts face a categorical conundrum. Under an earlier version of federal law, the state and federal offenses match-and the state offense is an ACCA predicate. Under the amended version, the offenses *do not* match-and the state offense *is not* an ACCA predicate. So the version of federal law that the court chooses to consult dictates the difference between serving a 10-year maximum or a 15-year minimum.

The question presented is:

Which version of federal law should a sentencing court consult under ACCA's categorical approach?

CONSOLIDATED WITH 22-6640 FOR ONE HOUR ARGUMENT.

CERT. GRANTED 5/15/2023