

Syllabus

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SUPREME COURT OF THE UNITED STATES

Syllabus

DESCAMPS *v.* UNITED STATESCERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT

No. 11–9540. Argued January 7, 2013—Decided June 20, 2013

The Armed Career Criminal Act (ACCA) increases the sentences of certain federal defendants who have three prior convictions “for a violent felony,” including “burglary, arson, or extortion.” 18 U. S. C. §924(e). To determine whether a past conviction is for one of those crimes, courts use a “categorical approach”: They compare the statutory elements of a prior conviction with the elements of the “generic” crime—*i.e.*, the offense as commonly understood. If the statute’s elements are the same as, or narrower than, those of the generic offense, the prior conviction qualifies as an ACCA predicate. When a prior conviction is for violating a “divisible statute”—one that sets out one or more of the elements in the alternative, *e.g.*, burglary involving entry into a building *or* an automobile—a “modified categorical approach” is used. That approach permits sentencing courts to consult a limited class of documents, such as indictments and jury instructions, to determine which alternative element formed the basis of the defendant’s prior conviction.

Petitioner Descamps was convicted of being a felon in possession of a firearm. The Government sought an ACCA sentence enhancement, pointing to Descamps’ three prior convictions, including one for burglary under California Penal Code Ann. §459, which provides that a “person who enters” certain locations “with intent to commit grand or petit larceny or any felony is guilty of burglary.” In imposing an enhanced sentence, the District Court rejected Descamps’ argument that his §459 conviction cannot serve as an ACCA predicate because §459 goes beyond the “generic” definition of burglary. The Ninth Circuit affirmed, holding that its decision in *United States v. Aguila-Montes de Oca*, 655 F. 3d 915, permits the application of the modified categorical approach to a prior conviction under a statute that is

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“categorically broader than the generic offense.” It found that Descamps’ §459 conviction, as revealed in the plea colloquy, rested on facts satisfying the elements of generic burglary.

Held: The modified categorical approach does not apply to statutes like §459 that contain a single, indivisible set of elements. Pp. 5–23.

(a) This Court’s caselaw all but resolves this case. In *Taylor v. United States*, 495 U. S. 575, and *Shepard v. United States*, 544 U. S. 13, the Court approved the use of a modified categorical approach in a “narrow range of cases” in which a divisible statute, listing potential offense elements in the alternative, renders opaque which element played a part in the defendant’s conviction. Because a sentencing court cannot tell, simply by looking at a divisible statute, which version of the offense a defendant was convicted of, the court is permitted to consult extra-statutory documents—but only to assess whether the defendant was convicted of the particular “statutory definition” that corresponds to the generic offense. *Nijhawan v. Holder*, 557 U. S. 29, and *Johnson v. United States*, 559 U. S. 133, also emphasized this elements-based rationale for the modified categorical approach. That approach plays no role here, where the dispute does not concern alternative elements but a simple discrepancy between generic burglary and §459. Pp. 5–10.

(b) The Ninth Circuit’s *Aguila-Montes* approach turns an elements-based inquiry into an evidence-based one, asking not whether “statutory definitions” necessarily require an adjudicator to find the generic offense, but whether the prosecutor’s case realistically led the adjudicator to find certain facts. *Aguila-Montes* has no roots in this Court’s precedents. In fact, it subverts those decisions, conflicting with each of the rationales supporting the categorical approach and threatening to undo all its benefits. Pp. 10–19.

(1) *Taylor*’s elements-centric categorical approach comports with ACCA’s text and history, avoids Sixth Amendment concerns that would arise from sentencing courts’ making factual findings that properly belong to juries, and averts “the practical difficulties and potential unfairness of a factual approach.” 495 U. S., at 601.

ACCA’s language shows that Congress intended sentencing courts “to look only to the fact that the defendant had been convicted of crimes falling within certain categories, and not to the facts underlying the prior convictions.” *Id.*, at 600. The Ninth Circuit’s approach runs headlong into that congressional choice. Instead of reviewing extra-statutory documents only to determine which alternative element was the basis for the conviction, the Circuit looks to those materials to discover what the defendant actually did.

Under ACCA, the sentencing court’s finding of a predicate offense indisputably increases the maximum penalty. Accordingly, that find-

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ing would (at least) raise serious Sixth Amendment concerns if it went beyond merely identifying a prior conviction. That is why *Shepard* refused to permit sentencing courts to make a disputed determination about what facts must have supported a defendant's conviction. 544 U. S., at 25 (plurality opinion). Yet the Ninth Circuit flouts this Court's reasoning by authorizing judicial factfinding that goes far beyond the recognition of a prior conviction.

The Ninth Circuit's decision also creates the same "daunting" difficulties and inequities that first encouraged the adoption of the categorical approach. Sentencing courts following *Aguila-Montes* would have to expend resources examining (often aged) documents for evidence that a defendant admitted, or a prosecutor showed, facts that, although unnecessary to the crime of conviction, satisfied an element of the relevant generic offense. And the *Aguila-Montes* approach would also deprive many defendants of the benefits of their negotiated plea deals. Pp. 12–16.

(2) In defending *Aguila-Montes*, the Ninth Circuit denied any real distinction between divisible and indivisible statutes extending further than the generic offense. But the Circuit's efforts to imaginatively reconceive all indivisible statutes as divisible ones are unavailing. Only divisible statutes enable a sentencing court to conclude that a jury (or judge at a plea hearing) has convicted the defendant of every element of the generic crime. Pp. 16–19.

(c) The Government offers a slightly different argument: It contends that the modified categorical approach should apply where, as here, the mismatch of elements between the crime of conviction and the generic offense results not from a missing element but from an element's overbreadth. But that distinction is malleable and manipulable. And in any event, it is a distinction without a difference. Whether the statute of conviction has an overbroad or missing element, the problem is the same: Because of the mismatch in elements, a person convicted under that statute is never convicted of the generic crime. Pp. 19–22.

(d) Because generic unlawful entry is not an element, or an alternative element of, §459, a conviction under that statute is never for generic burglary. Descamps' ACCA enhancement was therefore improper. Pp. 22–23.

466 Fed. Appx. 563, reversed.

KAGAN, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, GINSBURG, BREYER, and SOTOMAYOR, JJ., joined. KENNEDY, J., filed a concurring opinion. THOMAS, J., filed an opinion concurring in the judgment. ALITO, J., filed a dissenting opinion.

Opinion of the Court

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SUPREME COURT OF THE UNITED STATES

No. 11–9540

**MATTHEW ROBERT DESCAMPS, PETITIONER *v.*
UNITED STATES**

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[June 20, 2013]

JUSTICE KAGAN delivered the opinion of the Court.

The Armed Career Criminal Act (ACCA or Act), 18 U. S. C. §924(e), increases the sentences of certain federal defendants who have three prior convictions “for a violent felony,” including “burglary, arson, or extortion.” To determine whether a past conviction is for one of those crimes, courts use what has become known as the “categorical approach”: They compare the elements of the statute forming the basis of the defendant’s conviction with the elements of the “generic” crime—*i.e.*, the offense as commonly understood. The prior conviction qualifies as an ACCA predicate only if the statute’s elements are the same as, or narrower than, those of the generic offense.

We have previously approved a variant of this method—labeled (not very inventively) the “modified categorical approach”—when a prior conviction is for violating a so-called “divisible statute.” That kind of statute sets out one or more elements of the offense in the alternative—for example, stating that burglary involves entry into a building *or* an automobile. If one alternative (say, a building) matches an element in the generic offense, but the other

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(say, an automobile) does not, the modified categorical approach permits sentencing courts to consult a limited class of documents, such as indictments and jury instructions, to determine which alternative formed the basis of the defendant's prior conviction. The court can then do what the categorical approach demands: compare the elements of the crime of conviction (including the alternative element used in the case) with the elements of the generic crime.

This case presents the question whether sentencing courts may also consult those additional documents when a defendant was convicted under an "indivisible" statute—*i.e.*, one not containing alternative elements—that criminalizes a broader swath of conduct than the relevant generic offense. That would enable a court to decide, based on information about a case's underlying facts, that the defendant's prior conviction qualifies as an ACCA predicate even though the elements of the crime fail to satisfy our categorical test. Because that result would contravene our prior decisions and the principles underlying them, we hold that sentencing courts may not apply the modified categorical approach when the crime of which the defendant was convicted has a single, indivisible set of elements.

I

Petitioner Matthew Descamps was convicted of being a felon in possession of a firearm, in violation of 18 U. S. C. §922(g). That unadorned offense carries a maximum penalty of 10 years in prison. The Government, however, sought an enhanced sentence under ACCA, based on Descamps' prior state convictions for burglary, robbery, and felony harassment.

ACCA prescribes a mandatory minimum sentence of 15 years for a person who violates §922(g) and "has three previous convictions . . . for a violent felony or a serious

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