Syllabus

DESCAMPS *v.* UNITED STATES

CERTIORARI 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 Cal. 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 "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. 260–278.

(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 "nar-

row 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. 260–265.

(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. 265–274.

(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 finding 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.

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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. 267–271.

(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. 271–274.

(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. 274–277.

(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. 277–278.

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, *post,* p. 278. THOMAS, J., filed an opinion concurring in the judgment, *post,* p. 279. ALITO, J., filed a dissenting opinion, *post,* p. 281.

Dan B. Johnson, by appointment of the Court, 568 U. S. 976, argued the cause for petitioner. With him on the briefs was *Matthew Campbell.*

Benjamin J. Horwich argued the cause for the United States. With him on the brief were *Solicitor General Ver-*

rilli, Assistant Attorney General Breuer, Deputy Solicitor General Dreeben, and *Daniel S. Goodman.**

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 (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.

**Kevin K. Russell, Jeffrey L. Fisher,* and *Pamela S. Karlan* filed a brief for the National Association of Criminal Defense Lawyers et al. as *amici curiae* urging reversal.

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 drug offense." § 924(e)(1). The Act defines a "violent felony" to mean any felony, whether state or federal, that "has as an element the use, attempted use, or threatened use of physical force against the person of another," or that "is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another." § 924(e)(2)(B).

Descamps argued that his prior burglary conviction could not count as an ACCA predicate offense under our categorical approach. He had pleaded guilty to violating Cal. Penal Code Ann. § 459 (West 2010), which provides that a "person

who enters" certain locations "with intent to commit grand or petit larceny or any felony is guilty of burglary." That statute does not require the entry to have been unlawful in the way most burglary laws do. Whereas burglary statutes generally demand breaking and entering or similar conduct, California's does not: It covers, for example, a shoplifter who enters a store, like any customer, during normal business hours. See *People* v. *Barry*, 94 Cal. 481, 483–484, 29 P. 1026, 1026–1027 (1892). In sweeping so widely, the state law goes beyond the normal, "generic" definition of burglary. According to Descamps, that asymmetry of offense elements precluded his conviction under § 459 from serving as an ACCA predicate, whether or not his own burglary involved an unlawful entry that could have satisfied the requirements of the generic crime.

The District Court disagreed. According to the court, our modified categorical approach permitted it to examine certain documents, including the record of the plea colloquy, to discover whether Descamps had "admitted the elements of a generic burglary" when entering his plea. App. 50a. And that transcript, the court ruled, showed that Descamps had done so. At the plea hearing, the prosecutor proffered that the crime "'involve[d] the breaking and entering of a grocery store,'" and Descamps failed to object to that statement. *Ibid.* The plea proceedings, the District Court thought, thus established that Descamps' prior conviction qualified as a generic burglary (and so as a "violent felony") under ACCA. Applying the requisite penalty enhancement, the court sentenced Descamps to 262 months in prison—more than twice the term he would otherwise have received.

The Court of Appeals for the Ninth Circuit affirmed, relying on its recently issued decision in *United States* v. *Aguila-Montes de Oca*, 655 F. 3d 915 (2011) (en banc) (*per curiam*). There, a divided en banc court took much the same view of the modified categorical approach as had the District Court in this case. The en banc court held that when a sentencing

court considers a conviction under § 459—or any other statute that is "categorically broader than the generic offense"—the court may scrutinize certain documents to determine the factual basis of the conviction. See *id.*, at 940. Applying that approach, the Court of Appeals here found that Descamps' plea, as revealed in the colloquy, "rested on facts that satisfy the elements of the generic definition of burglary." 466 Fed. Appx. 563, 565 (2012).

We granted certiorari, 567 U. S. 964 (2012), to resolve a Circuit split on whether the modified categorical approach applies to statutes like § 459 that contain a single, "indivisible" set of elements sweeping more broadly than the corresponding generic offense.[1] We hold that it does not, and so reverse.

II

Our caselaw explaining the categorical approach and its "modified" counterpart all but resolves this case. In those decisions, as shown below, the modified approach serves a limited function: It helps effectuate the categorical analysis when a divisible statute, listing potential offense elements in the alternative, renders opaque which element played a part in the defendant's conviction. So understood, the modified approach cannot convert Descamps' conviction under § 459 into an ACCA predicate, because that state law defines burglary not alternatively, but only more broadly than the generic offense.

We begin with *Taylor* v. *United States*, 495 U. S. 575 (1990), which established the rule for determining when a defendant's prior conviction counts as one of ACCA's enu-

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[1] Compare, *e. g.*, 466 Fed. Appx. 563, 565 (CA9 2012) (case below) (applying the modified categorical approach to § 459); *United States* v. *Armstead*, 467 F. 3d 943, 947–950 (CA6 2006) (applying that approach to a similar, indivisible statute), with, *e. g.*, *United States* v. *Beardsley*, 691 F. 3d 252, 268–274 (CA2 2012) (holding that the modified categorical approach applies only to divisible statutes); *United States* v. *Giggey*, 551 F. 3d 27, 40 (CA1 2008) (en banc) (same).

merated predicate offenses (*e. g.*, burglary). *Taylor* adopted a "formal categorical approach": Sentencing courts may "look only to the statutory definitions"—*i. e.*, the elements—of a defendant's prior offenses, and *not* "to the particular facts underlying those convictions." *Id.*, at 600. If the relevant statute has the same elements as the "generic" ACCA crime, then the prior conviction can serve as an ACCA predicate; so too if the statute defines the crime more narrowly, because anyone convicted under that law is "necessarily . . . guilty of all the [generic crime's] elements." *Id.*, at 599. But if the statute sweeps more broadly than the generic crime, a conviction under that law cannot count as an ACCA predicate, even if the defendant actually committed the offense in its generic form. The key, we emphasized, is elements, not facts. So, for example, we held that a defendant can receive an ACCA enhancement for burglary only if he was convicted of a crime having "the basic elements" of generic burglary—*i. e.*, "unlawful or unprivileged entry into, or remaining in, a building or structure, with intent to commit a crime." *Ibid.* And indeed, we indicated that the very statute at issue here, § 459, does not fit that bill because "California defines 'burglary' so broadly as to include shoplifting." *Id.*, at 591.

At the same time, *Taylor* recognized a "narrow range of cases" in which sentencing courts—applying what we would later dub the "modified categorical approach"—may look beyond the statutory elements to "the charging paper and jury instructions" used in a case. *Id.*, at 602. To explain when courts should resort to that approach, we hypothesized a statute with alternative elements—more particularly, a burglary statute (otherwise conforming to the generic crime) that prohibits "entry of an automobile as well as a building." *Ibid.* One of those alternatives (a building) corresponds to an element in generic burglary, whereas the other (an automobile) does not. In a typical case brought under the statute, the prosecutor charges one of those two alternatives,

and the judge instructs the jury accordingly. So if the case involves entry into a building, the jury is "actually required to find all the elements of generic burglary," as the categorical approach demands. *Ibid.* But the statute alone does not disclose whether that has occurred. Because the statute is "divisible"—*i. e.*, comprises multiple, alternative versions of the crime—a later sentencing court cannot tell, without reviewing something more, if the defendant's conviction was for the generic (building) or non-generic (automobile) form of burglary. Hence *Taylor* permitted sentencing courts, as a tool for implementing the categorical approach, to examine a limited class of documents to determine which of a statute's alternative elements formed the basis of the defendant's prior conviction.

In *Shepard* v. *United States*, 544 U. S. 13 (2005), the hypothetical we posited in *Taylor* became real: We confronted a Massachusetts burglary statute covering entries into "boats and cars" as well as buildings. 544 U. S., at 17. The defendant there pleaded guilty to violating the statute, and we first confirmed that *Taylor*'s categorical approach applies not just to jury verdicts, but also to plea agreements. That meant, we held, that a conviction based on a guilty plea can qualify as an ACCA predicate only if the defendant "necessarily admitted [the] elements of the generic offense." *Id.*, at 26. But as we had anticipated in *Taylor*, the divisible nature of the Massachusetts burglary statute confounded that inquiry: No one could know, just from looking at the statute, which version of the offense Shepard was convicted of. Accordingly, we again authorized sentencing courts to scrutinize a restricted set of materials—here, "the terms of a plea agreement or transcript of colloquy between judge and defendant"—to determine if the defendant had pleaded guilty to entering a building or, alternatively, a car or boat. *Ibid.* Yet we again underscored the narrow scope of that review: It was not to determine "what the defendant and state judge must have understood as the factual basis of the

prior plea," but only to assess whether the plea was to the version of the crime in the Massachusetts statute (burglary of a building) corresponding to the generic offense. *Id.*, at 25–26 (plurality opinion).

Two more recent decisions have further emphasized the elements-based rationale—applicable only to divisible statutes—for examining documents like an indictment or plea agreement. In *Nijhawan* v. *Holder*, 557 U. S. 29 (2009), we discussed another Massachusetts statute, this one prohibiting "'Breaking and Entering at Night'" in any of four alternative places: a "building, ship, vessel, or vehicle." *Id.*, at 35. We recognized that when a statute so "refer[s] to several different crimes," not all of which qualify as an ACCA predicate, a court must determine which crime formed the basis of the defendant's conviction. *Ibid.* That is why, we explained, *Taylor* and *Shepard* developed the modified categorical approach. By reviewing the extra-statutory materials approved in those cases, courts could discover "which statutory phrase," contained within a statute listing "several different" crimes, "covered a prior conviction." 557 U. S., at 41. And a year later, we repeated that understanding of when and why courts can resort to those documents: "[T]he 'modified categorical approach' that we have approved permits a court to determine which statutory phrase was the basis for the conviction." *Johnson* v. *United States*, 559 U. S. 133, 144 (2010) (citation omitted).

Applied in that way—which is the only way we have ever allowed—the modified approach merely helps implement the categorical approach when a defendant was convicted of violating a divisible statute. The modified approach thus acts not as an exception, but instead as a tool. It retains the categorical approach's central feature: a focus on the elements, rather than the facts, of a crime. And it preserves the categorical approach's basic method: comparing those elements with the generic offense's. All the modified approach adds is a mechanism for making that comparison

when a statute lists multiple, alternative elements, and so effectively creates "several different . . . crimes." *Nijhawan*, 557 U. S., at 41. If at least one, but not all, of those crimes matches the generic version, a court needs a way to find out which the defendant was convicted of. That is the job, as we have always understood it, of the modified approach: to identify, from among several alternatives, the crime of conviction so that the court can compare it to the generic offense.[2]

The modified approach thus has no role to play in this case. The dispute here does not concern any list of alternative elements. Rather, it involves a simple discrepancy between generic burglary and the crime established in § 459. The former requires an unlawful entry along the lines of breaking and entering. See 3 W. LaFave, Substantive Criminal Law § 21.1(a) (2d ed. 2003) (hereinafter LaFave). The latter does not, and indeed covers simple shoplifting, as even the Gov-

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[2] The dissent delves into the nuances of various States' laws in an effort to cast doubt on this understanding of our prior holdings, arguing that we used the modified categorical approach in cases like *Taylor*, *Shepard*, and *Johnson* "in relation to statutes that may not have been divisible" in the way that we have just described. *Post*, at 285 (opinion of ALITO, J.). But if, as the dissent claims, the state laws at issue in those cases set out "merely alternative means, not alternative elements," of an offense, *post*, at 287, that is news to us. And more important, it would have been news to the *Taylor*, *Shepard*, and *Johnson* Courts: All those decisions rested on the explicit premise that the laws "contain[ed] statutory phrases that cover several different . . . crimes," not several different methods of committing one offense. *Johnson*, 559 U. S., at 144 (citing *Nijhawan*, 557 U. S., at 41). And if the dissent's real point is that distinguishing between "alternative elements" and "alternative means" is difficult, we can see no real-world reason to worry. Whatever a statute lists (whether elements or means), the documents we approved in *Taylor* and *Shepard*—*i. e.*, indictment, jury instructions, plea colloquy, and plea agreement—would reflect the crime's elements. So a court need not parse state law in the way the dissent suggests: When a state law is drafted in the alternative, the court merely resorts to the approved documents and compares the elements revealed there to those of the generic offense.

ernment acknowledges. See Brief for United States 38; *Barry*, 94 Cal., at 483–484, 29 P., at 1026–1027. In *Taylor*'s words, then, § 459 "define[s] burglary more broadly" than the generic offense. 495 U. S., at 599. And because that is true—because California, to get a conviction, need not prove that Descamps broke and entered—a § 459 violation cannot serve as an ACCA predicate. Whether Descamps *did* break and enter makes no difference. And likewise, whether he ever admitted to breaking and entering is irrelevant. Our decisions authorize review of the plea colloquy or other approved extra-statutory documents only when a statute defines burglary not (as here) overbroadly, but instead alternatively, with one statutory phrase corresponding to the generic crime and another not. In that circumstance, a court may look to the additional documents to determine which of the statutory offenses (generic or non-generic) formed the basis of the defendant's conviction. But here no uncertainty of that kind exists, and so the categorical approach needs no help from its modified partner. We know Descamps' crime of conviction, and it does not correspond to the relevant generic offense. Under our prior decisions, the inquiry is over.

III

The Court of Appeals took a different view. Dismissing everything we have said on the subject as "lack[ing] conclusive weight," the Ninth Circuit held in *Aguila-Montes* that the modified categorical approach could turn a conviction under *any* statute into an ACCA predicate offense. 655 F. 3d, at 931. The statute, like § 459, could contain a single, indivisible set of elements covering far more conduct than the generic crime—and still, a sentencing court could "conside[r] to some degree the factual basis for the defendant's conviction" or, otherwise stated, "the particular acts the defendant committed." *Id.*, at 935–936. More specifically, the court could look to reliable materials (the charging document, jury instructions, plea colloquy, and so forth) to deter-

mine "what facts" can "confident[ly]" be thought to underlie the defendant's conviction in light of the "prosecutorial theory of the case" and the "facts put forward by the government." *Id.*, at 936–937. It makes no difference, in the Ninth Circuit's view, whether "specific words in the statute" of conviction "'actually required'" the jury (or judge accepting a plea) "to find a particular generic element." *Id.*, at 936 (quoting *Taylor*, 495 U. S., at 602; some internal quotation marks omitted).[3]

That approach—which an objecting judge aptly called "modified factual," 655 F. 3d, at 948 (Berzon, J., concurring in judgment)—turns an elements-based inquiry into an

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[3] The dissent, as we understand it, takes the same view as the Ninth Circuit; accordingly, each of the reasons—statutory, constitutional, and practical—that leads us to reject *Aguila-Montes* proves fatal to the dissent's position as well. The dissent several times obscures its call to explore facts with language from our categorical cases, asking whether "the relevant portions of the state record clearly show that the jury necessarily found, or the defendant necessarily admitted, the elements of [the] generic [offense]." *Post*, at 294; see *Shepard*, 544 U. S., at 24 (plurality opinion) (reiterating *Taylor*'s "demanding requirement that . . . a prior conviction '*necessarily' involve[ ]*" a jury finding on each element of the generic offense (emphasis added)). But the dissent nowhere explains how a factfinder can have "necessarily found" a non-element—that is, a fact that by definition is *not* necessary to support a conviction. The dissent's fundamental view is that a sentencing court should be able to make reasonable "inference[s]" about what the factfinder really (even though not necessarily) found. See *post*, at 295. That position accords with our dissenting colleague's previously expressed skepticism about the categorical approach. See *Moncrieffe* v. *Holder*, 569 U. S. 184, 220 (2013) (Alito, J., dissenting) ("I would hold that the categorical approach is not controlling where the state conviction at issue was based on a state statute that encompasses both a substantial number of cases that qualify under the federal standard and a substantial number that do not. In such situations, it is appropriate to look beyond the elements of the state offense and to rely as well on facts that were admitted in state court or that, taking a realistic view, were clearly proved"). But there are several decades of water over that dam, and the dissent offers no newly persuasive reasons for revisiting our precedents.