No. 18-6662

In the Supreme Court of the United States

EDDIE LEE SHULAR, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether a state drug offense must match the elements of a generic analogue offense in order to qualify as a "serious drug offense" under the Armed Career Criminal Act of 1984, 18 U.S.C. 924(e)(2)(A)(ii).

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A2) is not published in the Federal Reporter but is reprinted at 736 Fed. Appx. 876.

JURISDICTION

The judgment of the court of appeals was entered on September 5, 2018. The petition for a writ of certiorari was filed on November 8, 2018. The petition for a writ of certiorari was granted on June 28, 2019. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Relevant statutory provisions are reproduced in an appendix to this brief. App., *infra*, 1a-29a.

STATEMENT

Following a guilty plea in the United States District Court for the Northern District of Florida, petitioner was convicted on one count of possession of a firearm by a felon, in violation of 18 U.S.C. 922(g)(1) and 924(e), and one count of possession with intent to distribute cocaine and cocaine base, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(C). Judgment 1. Petitioner was sentenced to 180 months of imprisonment, to be followed by three years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. A1-A2.

1. Concerned that "a 'large percentage' of crimes of theft and violence" were "'committed by a very small percentage of repeat offenders,'" Congress enacted the Armed Career Criminal Act of 1984 (ACCA) to "supplement the States' law enforcement efforts against 'career' criminals." *Taylor* v. *United States*, 495 U.S. 575, 581 (1990) (quoting H.R. Rep. No. 1073, 98th Cong., 2d Sess. 1 (1984)); see Pub. L. No. 98-473, Tit. II, ch. 18, 98 Stat. 2185 (18 U.S.C. App. 1202 (Supp. II 1984)) (repealed in 1986 by Firearms Owners' Protection Act, Pub. L. No. 99-308, § 104(b), 100 Stat. 459).

As originally enacted, the ACCA prescribed a 15-year minimum sentence for any person who "receive[d], possesse[d], or transport[ed]" a firearm in commerce and who "ha[d] three previous convictions by any court * * * for robbery or burglary, or both." 18 U.S.C. App. 1202(a) (Supp. II 1984). The statute defined "robbery" and "burglary" as felonies that "consist[ed] of" certain enumerated elements—including, in the case of burglary, a particular mens rea. See 18 U.S.C. App. 1202(c)(8) and (9) (Supp. II 1984) (defining "robbery" as "any felony consisting of the taking of the property of another from the person or presence of

another by force or violence, or by threatening or placing another person in fear that any person will imminently be subjected to bodily injury," and "burglary" as "any felony consisting of entering or remaining surreptitiously within a building that is property of another with intent to engage in conduct constituting a Federal or State offense").

In 1986, Congress amended the ACCA twice. First, in May 1986, Congress recodified the ACCA at its current location, 18 U.S.C. 924(e), and in doing so it replaced the original triggering offense—"receiv[ing], possess[ing], or transport[ing]" a firearm, 18 U.S.C. App. 1202(a) (Supp. II 1984)—with a cross-reference to 18 U.S.C. 922(g). See Firearms Owners' Protection Act, Pub. L. No. 99-308, § 104(a)(4), 100 Stat. 458-459. Section 922(g) makes it unlawful for certain individuals, including felons, to ship, transport, possess, or receive any firearm or ammunition with a specified connection to interstate commerce. 18 U.S.C. 922(g). In 1986, the default maximum term of imprisonment for a violation of Section 922(g), without the ACCA enhancement, was five years, see 18 U.S.C. 924(a)(1) (Supp. IV 1986); it has since been increased to ten years, see Anti-Drug Abuse Amendments Act of 1988, Pub. L. No. 100-690, Tit. VI, Subtit. N, § 6462(4), 102 Stat. 4374 (18 U.S.C. 924(a)(2)).

Second, in October 1986, Congress substantially expanded the range of prior convictions that can serve as predicates for an ACCA-enhanced sentence. See Career Criminals Amendment Act of 1986, Pub. L. No. 99-570, Tit. I, Subtit. I, § 1402, 100 Stat. 3207–39. Congress replaced the original ACCA's two predicate offenses—robbery and burglary, as each had been defined in the statute—with "violent felony" and "serious

drug offense." § 1402(a), 100 Stat. 3207–39. The amendment defined "serious drug offense" to mean either

> (i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the first section or section 3 of Public Law 96-350 (21 U.S.C. 955a et seq.), for which a maximum term of imprisonment of ten years or more is prescribed by law; or
>
> (ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law.

§ 1402(b), 100 Stat. 3207–39 to 3207–40 (18 U.S.C. 924(e)(2)(A) (Supp. V 1987)). The same amendment separately defined "violent felony" as

> any crime punishable by imprisonment for a term exceeding one year that—
>
> (i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or
>
> (ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another.

Ibid., 100 Stat. 3207–40 (18 U.S.C. 924(e)(2)(B) (Supp. V 1987)). The amended statute omitted the original ACCA's definition of burglary (and robbery). See *ibid.*

Congress has made minor changes to those provisions in the years since. In 1988, it expanded the definition of "violent felony" to include certain acts of "juvenile delinquency." Anti-Drug Abuse Amendments Act of 1988, Pub. L. No. 100-690, Tit. VI, Subtit. N, § 6451(1), 102 Stat. 4371 (18 U.S.C. 924(e)(2)(B)). It also "clarif[ied]" that a defendant's predicate offenses must have been "committed on occasions different from one another." Minor and Technical Criminal Law Amendments Act of 1988, Pub. L. No. 100-690, Tit. VII, Subtit. B, § 7056, 102 Stat. 4402 (18 U.S.C. 924(e)(1)) (capitalization and emphasis altered). And Congress has updated one of the cross-references in Section 924(e)(2)(A)(i) to "section 3 of Public Law 96-350," 18 U.S.C. 924(e)(2)(A)(i) (1988), which now refers instead to "chapter 705 of title 46." 18 U.S.C. 924(e)(2)(A)(i). As relevant to this case, however, the ACCA's text has remained unchanged since 1986. See 18 U.S.C. 924(e)(2)(A) and (B).

2. In 2017, investigators in the Jefferson County (Florida) Sheriff's Office, who were engaged in a joint investigation with the Drug Enforcement Administration, received a tip that petitioner was trafficking cocaine from his home. Presentence Investigation Report (PSR) ¶¶ 11-12. The investigators used a confidential source to conduct three controlled cocaine purchases at the home, with the source indicating that petitioner was the seller all three times. PSR ¶ 12. Based on that information, the investigators obtained a warrant to search petitioner's residence. PSR ¶¶ 12-13.

When they executed that warrant, officers located a .32-caliber revolver in the pocket of a man's jacket hanging in a closet in the master bedroom. PSR ¶ 14. The jacket also contained a pay stub in petitioner's name. *Ibid.* Officers additionally seized 22.6 grams of cocaine

base; 46.2 grams of powder cocaine; $510 in currency in a wallet containing petitioner's identification; a digital scale; numerous empty small baggies; and various measuring cups, spoons, and cooking utensils with cocaine residue. *Ibid.* In a post-arrest interview with police, petitioner admitted that the drugs belonged to him but claimed that the revolver belonged to his mother. PSR ¶ 15.

A federal grand jury in the Northern District of Florida returned an indictment charging petitioner with one count of possession of a firearm by a felon, in violation of 18 U.S.C. 922(g)(1) and 924(e)(1), and one count of possession with intent to distribute cocaine and cocaine base, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(C). Indictment 1-3; PSR ¶¶ 1-2. Petitioner pleaded guilty to both counts pursuant to a plea agreement. Judgment 1; PSR ¶ 5; see D. Ct. Doc. 21 (Sept. 15, 2017).

3. The Probation Office's presentence report calculated petitioner's advisory Guidelines range for both of his federal counts of conviction (the firearm count and the drug count) to be 188 to 235 months. PSR ¶ 77. The Probation Office determined that petitioner was subject to an ACCA sentence on the firearm count. PSR ¶¶ 32. In particular, the Probation Office informed the district court that petitioner had six prior convictions, all stemming from guilty pleas, for "serious drug offense[s]," 18 U.S.C. 924(e)(1)—five Florida convictions for the sale of cocaine and one Florida conviction for possession of cocaine with intent to sell. See PSR ¶¶ 32, 48-49.

At the time of the conduct underlying those convictions (March and April 2012), as today, the relevant Florida statute made it unlawful to "sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance." Fla. Stat. § 893.13(1)(a) (2012); cf. *id.* § 891.13(1)(a) (2019) (same). At all relevant

times, cocaine was (and remains) a "controlled substance" under both federal and Florida law. See 21 U.S.C. 802(6), 812(c) (Sched. II(a)(4)); Fla. Stat. § 893.03(2)(a)(4) (2012); cf. *id.* § 893.03(2)(a)(4) (2019) (same). And petitioner's six convictions for selling cocaine and possessing with intent to sell it, in violation of Fla. Stat. § 893.13(1)(a) (2012), each carried a maximum term of imprisonment of at least ten years. See *ibid.* (violations involving, *inter alia*, cocaine are second-degree felonies punishable under Fla. Stat. § 775.082 (2012)); Fla. Stat. § 775.082(3)(c) (2012) (second-degree felonies punishable by up to 15 years of imprisonment); cf. Fla. Stat. § 775.082(3)(d) (2019) (same).

Petitioner objected to the Probation Office's determination that his six Florida drug convictions for selling cocaine and possessing cocaine with intent to sell, in violation of Fla. Stat. § 893.13(1)(a) (2012), were "serious drug offense[s]" under the ACCA. D. Ct. Doc. 29 (Dec. 29, 2017). He did not dispute the existence or validity of any of those convictions. Sent. Tr. 4. Instead, petitioner contended that "Congress intended 'serious drug offense' as defined in 18 U.S.C. § 924(e)(2)(A)" to include only offenses that require a particular "*mens rea* element"—namely, that "the defendant knew he was selling a controlled substance"—and that his prior convictions under Section 893.13(1)(a) did not qualify as predicates under that reading of the ACCA. D. Ct. Doc. 29. Although conviction under Section 893.13(1)(a) requires proof of knowledge of the presence of the substance, Florida law does not additionally require proof of knowledge of its illicit nature; instead, defendants may raise lack of such knowledge as an affirmative defense. *Ibid.*; Sent. Tr. 4-5; see *State* v. *Adkins*, 96 So. 3d 412, 415-416 (Fla. 2012) (citing *Chicone* v. *State*, 684 So. 2d 736, 739-740 (Fla. 1996), and quoting Fla. Stat. § 893.101 (2011)).

Petitioner recognized, however, that his argument was foreclosed by the Eleventh Circuit's decision in *United States* v. *Smith*, 775 F.3d 1262 (2014), cert. denied, 135 S. Ct. 2827 (2015); see D. Ct. Doc. 29; Sent. Tr. 5. In *Smith*, the Eleventh Circuit—also addressing Section 893.13(1)—had rejected the argument that, to constitute a "serious drug offense" under the ACCA, a state offense must be defined to contain a mens rea requirement that matches the mens rea requirement of some generic analogue crime. 775 F.3d at 1267. The court observed that the "plain language" of the ACCA "require[s] only that the predicate offense 'involves' * * * certain activities related to controlled substances." *Ibid.* (quoting 18 U.S.C. 924(e)(2)(A)(ii)) (brackets omitted). The court explained in particular that "[n]o element of *mens rea* with respect to the illicit nature of the controlled substance is expressed or implied by [that] definition," and therefore a conviction under Section 893.13(1) qualifies as a "serious drug offense" under the ACCA irrespective of the mens rea required for a conviction under that Florida provision. *Id.* at 1267-1268 (citations omitted).

Applying *Smith*, the district court in this case "f[ou]nd that the Florida drug convictions at issue do qualify as serious drug offenses for purposes of the [ACCA]." Sent. Tr. 5. It accordingly overruled petitioner's objection to the Probation Office's determination that he qualified for an ACCA sentence. *Ibid.* The court sentenced petitioner to concurrent terms of 180 months of imprisonment on both counts. Judgment 2; Sent. Tr. 10.

3. The court of appeals affirmed. Pet. App. A1-A2. It explained that *Smith* foreclosed petitioner's contention that his convictions under Section 893.13(1)(a) are not "serious drug offenses" under the ACCA. *Id.* at A2.

SUMMARY OF ARGUMENT

The court of appeals correctly affirmed petitioner's ACCA sentence. The ACCA defines a "serious drug offense" to include state offenses that carry a maximum prison term of at least ten years and that "involv[e] manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance." 18 U.S.C. 924(e)(2)(A)(ii). Petitioner's six convictions under Florida law for selling cocaine and for possessing cocaine with intent to sell it readily satisfy that definition because they necessarily entailed "distributing" and "possessing with intent to * * * distribute[] a controlled substance," *ibid.*, respectively. Contrary to petitioner's contention, Section 924(e)(2)(A)(ii) does not call for a more complicated analysis that requires comparing all of the elements of the state offense to those of a judicially constructed generic version of a manufacturing, distributing, or possession offense.

A. Section 924(e)(2)(A)(ii) encompasses state-law offenses that "*involv[e]*" any of the listed drug-related activities. 18 U.S.C. 924(e)(2)(A)(ii) (emphasis added). In ordinary usage, an offense involves an activity if the commission of the offense's elements necessarily entails that activity. That is exactly how this Court construed a similar "involves" provision in *Kawashima* v. *Holder*, 565 U.S. 478 (2012), explaining that a federal statute covering offenses that "'involv[e]' fraud or deceit" encompasses "offenses with elements that necessarily entail fraudulent or deceitful conduct." *Id.* at 484; see *id.* at 482-485. That analysis "employ[s] a categorical approach," because it looks to the elements of state law rather than the particular circumstances of the defendant's individual offenses. *Id.* at 483. But it does not call for constructing a generic version of the offense and comparing every element of that generic analogue to those

of the defendant's crimes. In Section 924(e)(2)(A)(ii), Congress adopted that same approach.

The statutory context confirms that conclusion. Neighboring provisions of the ACCA, enacted at the same time as Section 924(e)(2)(A)(ii), illustrate that Congress used different wording when it wanted to prescribe a generic-analogue approach to identifying ACCA predicates. In particular, Section 924(e)(2)(B)(ii) asks (*inter alia*) whether a defendant's prior offense "*is* burglary, arson, or extortion." 18 U.S.C. 924(e)(2)(B)(ii) (emphasis added). That language does call for comparing a crime to the generic version of the relevant enumerated offense. See *Taylor* v. *United States*, 495 U.S. 575, 599-602 (1990). The contrast between that text and Section 924(e)(2)(A)(ii)'s "involving" language indicates that Congress did not intend courts to apply the same generic-analogue analysis.

B. Petitioner's contrary arguments lack merit. As a threshold matter, he contends that the *Kawashima* approach applied by the court of appeals departs from this Court's decisions adopting a "categorical approach" for other provisions of the ACCA. But that contention simply misapprehends the *Kawashima* approach, which is a categorical inquiry in the relevant sense: it classifies state-law offenses based on their elements, not the specific facts of a particular defendant's past crimes.

The dispute here thus boils down to what question a court should apply the categorical approach to answer. Section 924(e)(2)(A)(ii)'s text and context make clear that the proper inquiry is whether the state offense's elements necessarily entail manufacturing, distributing, or possessing with intent to manufacture or distribute a controlled substance. Petitioner points to nothing in the statutory text, context, or this Court's precedents that supports reading the word "involving" in Section

924(e)(2)(A)(ii) differently from how the Court construed the same term in *Kawashima*, in a manner that would require courts to compare state offenses to judicially-formulated generic analogues.

Petitioner's remaining arguments are misplaced. He points to the mens rea required by most States and federal law for controlled-substance offenses in 1986. But those mens rea requirements have no bearing here unless Congress in fact intended a generic-analogue approach in Section 924(e)(2)(A)(ii), and the clear statutory text and context show that it did not. Petitioner also invokes the rule of lenity, but it likewise has no role to play because the ACCA's language does not support his reading.

C. Congress's decision not to extend the generic-analogue analysis to Section 924(e)(2)(A)(ii) sensibly avoided or minimized practical difficulties that petitioner's approach would invite. As petitioner emphasizes, unlike the familiar crimes of burglary, arson, and extortion—each with deep common-law roots and relatively well established requirements in state law in 1986—drug offenses were comparatively new and less uniformly defined. Given that unfamiliarity and inconsistency, it would have been much more difficult for courts to attempt to synthesize generic versions of those offenses from the motley raw material of state and federal laws. Congress avoided that difficulty by directing courts instead to ask simply whether a state offense's elements involve manufacturing, distributing, or possessing with intent to manufacture or distribute a controlled substance—and to ignore whatever else the state offense's elements required.

That approach also minimizes the risk of geographic disparity in sentencing. Variation among state-law definitions of crimes at the margin is immaterial so long as the offense necessarily entails one of the listed forms of

conduct (and, for possession, the specified intent). Petitioner's approach, in contrast, exacerbates the risk of disuniform outcomes from one State to another.

ARGUMENT

A STATE DRUG OFFENSE NEED NOT MATCH THE ELEMENTS OF A GENERIC ANALOGUE OFFENSE TO QUALIFY AS A "SERIOUS DRUG OFFENSE" UNDER THE ACCA

The ACCA defines a "serious drug offense" to include any state-law offense "*involving* manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance" that carries a potential term of imprisonment of at least ten years. 18 U.S.C. 924(e)(2)(A)(ii) (emphasis added). Petitioner's prior convictions under Fla. Stat. § 893.13(1)(a) (2012) easily meet that definition, because a violation of that statute categorically and necessarily entails either "distributing" cocaine—which is a controlled substance under both federal and Florida law—or "possessing with intent to * * * distribute" it, 18 U.S.C. 924(e)(2)(A)(ii). Contrary to petitioner's contention (Br. 8-29), the ACCA does not further confine its definition of "serious drug offense" to state-law offenses that match every element of a generic analogue offense, including mens rea. That reading subverts the provision's plain text; disregards the different wording that Congress employed in a neighboring provision that *does* call for such a generic-analogue approach; and creates practical difficulties for courts and divergent outcomes for similarly situated defendants. No precedent of this Court requires such a reading, and this Court should reject it.

A. Section 924(e)(2)(A)(ii)'s Text And Context Show That It Covers Any State Offense Whose Elements Necessarily Entail Manufacturing, Distributing, Or Possessing With Intent To Distribute A Controlled Substance

"As in all statutory construction cases," courts interpreting the ACCA "begin with 'the language itself and the specific context in which that language is used.'" *McNeill* v. *United States*, 563 U.S. 816, 819 (2011) (brackets and citation omitted). The text and context of Section 924(e)(2)(A)(ii) show that a state crime is a "serious drug offense" if its elements necessarily entail one of the types of conduct (and for possession, the mental state) listed in Section 924(e)(2)(A)(ii) itself. No analysis of analogues is necessary.

1. The word "involve" means to "include (something) as a necessary part or result." *New Oxford Dictionary of English* 962 (2001); see *The Random House Dictionary of the English Language* 1005 (2d ed. 1987) (*Random House*) ("1. to include as a necessary circumstance, condition, or consequence"); *Oxford American Dictionary* 349 (1980) ("1. to contain within itself, to make necessary as a condition or result"); *Webster's New International Dictionary* 1307 (2d ed. 1949) ("to contain by implication; to require, as implied elements, antecedent conditions, effect, etc."). A state offense accordingly "involve[s] manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance," 18 U.S.C. 924(e)(2)(ii), whenever one of those activities is a "necessary part or result" of the conduct that the offense's elements describe.

The Court construed the term "involves" in precisely that way in *Kawashima* v. *Holder*, 565 U.S. 478 (2012). *Kawashima* concerned 8 U.S.C. 1101(a)(43)(M)(i), which defines an "aggravated felony" to include (*inter alia*) an

offense that "'involves fraud or deceit in which the loss to the victim or victims exceeds $10,000.'" 565 U.S. at 481 (quoting 8 U.S.C. 1101(a)(43)(M)(i)); see *id.* at 482-485. The Court found that the "language" of the "'involves fraud or deceit'" clause in that statute "is clear": it "mean[s] offenses with elements that *necessarily entail* fraudulent or deceitful conduct." *Id.* at 484 (emphasis added).

The Court explained that the requisite analysis "employ[s] a categorical approach," because it "look[s] to the statute defining the crime of conviction" to identify the "elements of the offense[]," "rather than to the specific facts underlying the crime." *Kawashima*, 565 U.S. at 483. In particular, the ultimate inquiry for determining whether a state offense qualifies as "involv[ing] fraud or deceit" turns on whether "the elements of the offense[] establish" that the defendant "committed crimes involving" such conduct. *Ibid.*; see *id.* at 483-485. The Court emphasized, however, that the "'involves fraud or deceit'" clause is not even "limited to offenses that include fraud or deceit as formal elements." *Id.* at 481, 484 (quoting 8 U.S.C. 1101(a)(43)(M)(i)). And it did not construe the phrase to require positing a "generic" version of a "fraud" or "deceit" crime, all of the elements of which would have to be present in the statutory definition of a defendant's prior offense.

Congress's adoption of a similar approach—which is categorical because it examines the elements of the predicate offense rather than the facts of a specific case, but which does not involve a wholesale comparison to a complete generic analogue—is even clearer in the context of Section 924(e)(2)(A)(ii). That provision, unlike the one construed in *Kawashima*, does not include a term like "fraud" that could be interpreted to refer to a generic

crime, cf. *Neder* v. *United States*, 527 U.S. 1, 22 (1999). It instead uses plain action words—"manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance," 18 U.S.C. 924(e)(2)(A)(ii)—to describe the conduct to which it refers. Just because drug laws may likewise include those action verbs as part of the definition of a complete criminal offense—*e.g.*, defining the crime of "drug trafficking" to include "distribut[ing] * * * [a] controlled substance" in particular circumstances, 18 U.S.C. 924(c)(2) (Supp. V 1987)—does not suggest that Congress required a "controlled substance offense" to involve, in addition to the action described, *also* every element of a generic version of whatever additional circumstances those drug laws include.

That is particularly evident when the additional circumstance is a defendant's mens rea. In describing the relevant activity, Section 924(e)(2)(A)(ii)'s text expressly limits qualifying drug-possession offenses to those with a particular mental state: "intent to manufacture or distribute[] a controlled substance." 18 U.S.C. 924(e)(2)(A)(ii). For such possession, Congress specified that it must be accompanied by a particular mens rea. But for non-possession offenses—manufacturing or distributing a controlled substance—the omission of any mental state indicates that none is required. See *Russello* v. *United States*, 464 U.S. 16, 23 (1983) ("Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." (brackets and citation omitted)).

2. The "specific context" of Section 924(e)(2)(A)(ii)'s language, *McNeill*, 563 U.S. at 819 (citation omitted), reinforces the most natural reading of its text. Its neighboring provisions illustrate the alternative language that Congress used when it wanted a different approach to determining whether an offense qualifies as an ACCA predicate—including an approach that would require comparison to a complete generic analogue offense.

Section 924(e)(2)(A)(ii)'s "involving" clause is one of four provisions enacted simultaneously in the 1986 ACCA amendments, each of which defines a separate category of predicate offenses for the ACCA's enhanced sentencing framework. 18 U.S.C. 924(e)(2)(A) and (B); see pp. 3-4, *supra*. The other three provisions—Section 924(e)(2)(A)(i) (the "federal-drug-offense clause"), Section 924(e)(2)(B)(i) (the "elements clause"), and Section 924(e)(2)(B)(ii) (the "enumerated-offenses clause")—employ different linguistic formulations in defining the offenses that qualify. Congress's use of those distinct formulations—in close proximity, enacted together with the "involving" clause in Section 924(e)(2)(A)(ii)—is presumed to be purposeful. See *Russello*, 464 U.S. at 23-24.

The federal-drug-offense clause's alternative definition of "serious drug offense" includes "an offense under" particular federal statutes that address controlled substances. 18 U.S.C. 924(e)(2)(A)(i). And Section 924(e)(2)(B) defines a "violent felony" as "any crime punishable by imprisonment for a term exceeding one year" (or an act of juvenile delinquency that meets certain other criteria) that satisfies either the elements clause or the enumerated-offenses clause. See 18 U.S.C. 924(e)(2)(B). The elements clause is satisfied by an offense that "*has as an element* the use, attempted use, or threatened use of physical force against the person

of another." 18 U.S.C. 924(e)(2)(B)(i) (emphasis added). The enumerated offenses clause is satisfied by an offense that "*is* burglary, arson, extortion, [or] *involves* use of explosives." 18 U.S.C. 924(e)(2)(B)(ii) (emphases added); see *Johnson* v. *United States*, 135 S. Ct. 2551, 2556-2563 (2015) (holding an additional residual "involves" clause in Section 924(e)(2)(B)(ii) unconstitutional).

The contrast between the language in the "involving" clause in Section 924(e)(2)(A)(ii) at issue here and the language of the enumerated-offenses clause—which *does* employ a generic-analogue approach—is especially instructive. This Court has long held that the enumerated-offenses clause's "is" phrasing requires courts to identify the "generic meaning" of the enumerated crimes and then to compare the elements of a defendant's prior offense with the "generic" analogue offense. *Taylor* v. *United States*, 495 U.S. 575, 599 (1990); see *id.* at 597, 599-602. Under that approach, "an offense constitutes 'burglary' for purposes of a § 924(e) sentence enhancement if either its statutory definition substantially corresponds to 'generic' burglary, or"—where the statutory definition lists alternative elements—if "the charging paper and jury instructions actually required the jury to find all the elements of generic burglary in order to convict the defendant." *Id.* at 602; see, *e.g.*, *United States* v. *Stitt*, 139 S. Ct. 399, 405 (2018); see also *Descamps* v. *United States*, 570 U.S. 254, 261-262 (2013). Section 924(e)(2)(B)(ii) calls for precisely the type of comparison between all of the elements of a defendant's prior offense and a generic analogue offense that petitioner advocates (Br. 8-24) for Section 924(e)(2)(A)(ii).

But the definition of "serious drug offense" in Section 924(e)(2)(A)(ii)'s "involving" clause contrasts sharply with the enumerated-offenses clause in Section 924(e)(2)(B)(ii).

In Section 924(e)(2)(A)(ii), Congress chose *not* to employ the "is" formulation that it employed in the enumerated-offenses clause. It opted instead to require only that a state-law offense "involv[e]" particular conduct (and, for possession, a particular intent). 18 U.S.C. 924(e)(2)(A)(ii). "Congress" thus "defined the terms 'violent felony' and 'serious drug offense' in decidedly different manners." *United States* v. *Alexander*, 331 F.3d 116, 131 (D.C. Cir. 2003). Especially in light of its juxtaposition alongside a differently worded provision that does call for comparing the elements of a state-law offense to a "generic" analogue offense, *Taylor*, 495 U.S. at 599, 602, Section 924(e)(2)(A)(ii) should not be construed to require that same kind of generic-analogue inquiry.

The words "is" and "involving" cannot sensibly viewed as synonyms in this setting. Indeed, the enumerated-offenses clause's own use of *both* "is" and "involves" in the same phrase further illustrates that Congress did not employ those terms interchangeably in the ACCA. The statutory context thus confirms what the plain text already indicates—namely, that Section 924(e)(2)(A)(ii) does not require positing a generic offense of manufacturing, distributing, or possessing with intent to distribute a controlled substance and then comparing the elements of a defendant's offense to that generic crime. Section 924(e)(2)(A)(ii) instead prescribes a straightforward test, which is satisfied when the elements of the defendant's state-law offense, as a categorical matter, necessarily entail the activity of manufacturing, distributing, or possessing with intent to distribute a controlled substance. 18 U.S.C. 924(e)(2)(A)(ii).

B. Petitioner's Importation Of A Generic-Analogue Approach, And A Mens Rea Requirement, Into Section 924(e)(2)(A)(ii) Is Unsound

Petitioner's six prior convictions for selling cocaine or possessing it with intent to sell, in violation of Fla. Stat. § 893.13(1)(a) (2012), readily qualify as offenses "involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance," 18 U.S.C. 924(e)(2)(A)(ii). The Florida law made it unlawful to "sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance." Fla. Stat. § 893.13(1)(a) (2012). Its language tracks Section 924(e)(2)(A)(ii) nearly verbatim. The elements of petitioner's offenses—which he admitted by pleading guilty—necessarily entailed distributing cocaine (by selling it) or possessing cocaine with intent to distribute it (by selling it), respectively. Petitioner provides no sound reason why his prior convictions would nonetheless fail to qualify as "serious drug offense[s]" under Section 924(e)(2)(A)(ii).

1. As a threshold matter, the objections of petitioner and his amici rest largely on their misunderstanding of the *Kawashima* approach adopted by the court below, which they view to be out of step with the "categorical approach" that the remainder of the ACCA applies, Pet. Br. i; see, *e.g.*, *id.* at 1, 6-9, 13, 18, 21; see NACDL Amicus Br. 4-6; FAMM Amicus Br. 4-26; AILA Amicus Br. 10-13. But as explained above, the *Kawashima* approach *is* a "categorical approach."

What makes an approach "categorical" is that it "look[s] only to the statutory definitions of the prior offenses, and not to the particular facts underlying those convictions." *Taylor*, 495 U.S. at 600; see *Sessions* v. *Dimaya*, 138 S. Ct. 1204, 1211 n.1 (2018) (explaining that

an approach that examines "what is legally necessary for a conviction" is a "categorical" approach); see, *e.g.*, *Kawashima*, 565 U.S. at 483. In some contexts, the word "involves" may call not for a categorical approach at all, but instead a "circumstance-specific" analysis of "the specific way in which an offender committed the crime on a specific occasion," *Nijhawan* v. *Holder*, 557 U.S. 29, 34 (2009). But nobody advocates for, and the court of appeals did not adopt, a non-categorical approach here.

Instead, when "determining whether a state conviction qualifies as a predicate under" Section 924(e)(2)(A)(ii), the court of appeals applies a "'categorical approach'" that is "concerned only with the fact of the conviction and the statutory definition of the offense, rather than with the particular facts of the defendant's crime." *United States* v. *White*, 837 F.3d 1225, 1229 (11th Cir. 2016) (per curiam) (citing *United States* v. *Smith*, 775 F.3d 1262, 1267 (11th Cir. 2014), cert. denied, 135 S. Ct. 2827 (2015)), cert. denied, 138 S. Ct. 1282 (2018). The court determines—on a categorical basis—whether a predicate offense "involve[s]" manufacturing, distributing, or possessing with intent to manufacture or distribute controlled substances. *Ibid.*

2. The dispute in this case thus is not about *whether* to apply a categorical approach; it is about *what question* the categorical analysis should answer. For the reasons explained above, the *Kawashima* categorical approach indicated by the text and context of Section 924(e)(2)(A)(ii) examines whether the elements of a crime "involve" certain conduct—not whether they completely map onto the definition of a "generic" crime. Petitioner and his amici identify nothing in the text or context of Section 924(e)(2)(A)(ii) that would support a deviation from *Kawashima*'s definition of "involve."

Petitioner does not dispute the ordinary meaning of "involving," much less show that Congress employed an alternative meaning in Section 924(e)(2)(A)(ii). Indeed, he agrees that "involve" means "'to include as a necessary circumstance, condition, or consequence,'" and thus calls for examining what "the state offense necessarily requires" the prosecution to prove (or a defendant to admit). Pet. Br. 14 (quoting *Random House* 1005). And he fails to explain why Section 924(e)(2)(A)(ii)'s "involving" clause should be read exactly like Section 924(e)(2)(B)(ii)'s enumerated-offenses clause, notwithstanding their clear difference in wording. He simply asserts (Br. 17) that the enumerated-offenses clause "provide[s] a list of generic offenses qualifying as 'violent felonies,'" and that Section 924(e)(2)(A)(ii) should be read the same way. But as explained above, the different text of those provisions leads to the *opposite* conclusion. An offense satisfies the enumerated-offenses clause if it "is" one of the enumerated crimes, whereas an offense satisfies Section 924(e)(2)(A)(ii) if it "involv[es]" particular activities. 18 U.S.C. 924(e)(2)(A)(ii) and (B)(ii).

Petitioner's reliance (Br. 16-18) on the other ACCA clauses that define predicate offenses is likewise misplaced. Petitioner notes (Br. 16-17) that the preceding clause of the ACCA, Section 924(e)(2)(A)(i), defines "serious drug offense" to include offenses under certain federal controlled-substances laws, and argues that Section 924(e)(2)(A)(ii) must similarly refer to fully defined crimes. But petitioner's assumption (Br. 17) that "the Federal-offenses and State-offenses clauses in § 924(e)(2)(A)" must be read to "parallel" each other overlooks the critical difference in their language. Section 924(e)(2)(A)(i) provides simply that "'serious drug

offense' means * * * an offense under" specific federal statutes. 18 U.S.C. 924(e)(2)(A)(i). Section 924(e)(2)(A)(ii), in contrast, provides that "'serious drug offense' means * * * an offense under State law[] *involving*" specified conduct (and for possession, a certain intent). 18 U.S.C. 924(e)(2)(A)(ii) (emphasis added). Although the substantive scope of the federal and state crimes that qualify as "serious drug offense[s]" may be broadly similar, the divergent text of the two provisions makes any divergence in their application unremarkable.

Petitioner also points (Br. 17-18) to the elements clause, which defines a "violent felony" to include an offense that (*inter alia*) "has as an element" any of several specified things. 18 U.S.C. 924(e)(2)(B)(i). He contends (Br. 18) that, "[i]f [Congress] wanted courts to consider the listed terms" in Section 924(e)(2)(A)(ii) "as elements, it could have said so," as it did in the elements clause. But any suggestion that applying *Kawashima*'s definition of "involve" to Section 924(e)(2)(A)(ii) makes it identical to the elements clause is misplaced. As the Court recognized in *Kawashima*, an offense will "involv[e]" certain conduct if it has "elements that *necessarily entail* [that] conduct"—not just when it "include[s]" that conduct as an "element[]." *Kawashima*, 565 U.S. at 484 (emphasis added).

For example, as the court below has recognized, an offense may "involv[e] * * * possessing with intent to * * * distribute[] a controlled substance," 18 U.S.C. 924(e)(2)(A)(ii), if a state drug-trafficking statute indicates that intent to distribute is conclusively presumed based on "the significant quantity of drugs a defendant must possess to violate the trafficking statute," even if intent to distribute is not an explicit element of the crime. *White*, 837 F.3d at 1233; see *id.* at 1231-1235; see

also Gov't Br. in Opp. at 5-9, *White* v. *United States*, 138 S. Ct. 1282 (2018) (No. 17-6668). To the extent that petitioner suggests (Br. 24-29) that some lower courts have given the term "involving" too broad an interpretation in this regard, those concerns are not present here. Petitioner's six convictions for selling cocaine and possessing cocaine with intent to sell it involved distribution and possessing with intent to distribute on any reasonable interpretation of "involving."

3. Petitioner errs in contending that this Court's decisions support reading "involving" effectively to mean "matches a generic analogue offense." See Pet. Br. 15. The main precedent on which petitioner relies—*Taylor* v. *United States*, *supra*—concerned the enumerated-offenses clause (which uses the word "is"), *not* Section 924(e)(2)(A)(ii) (which uses the word "involving"). *Taylor*'s reasoning for adopting a generic-analogue analysis in the enumerated-offenses clause was specific to the language and history of that clause.

The Court in *Taylor* cited the enumerated-offenses clause's use of the phrase "'*is* burglary'" as evidence that Congress intended to cover burglary generally. 495 U.S. at 597 (citation omitted). It also noted that the 1986 amendments eliminated an express definition of burglary that appeared in the ACCA as originally enacted. *Id.* at 598-599. The Court accordingly reasoned that "[t]he omission of a definition of burglary in the 1986 Act therefore implies, at most, that Congress did not wish to specify an exact formulation that an offense must meet in order to count as 'burglary' for enhancement purposes" and instead "meant by 'burglary' the generic sense in which the term is now used in the criminal codes of most States." *Ibid.* Since *Taylor*, the Court has recognized that the remaining

offenses enumerated along with burglary are also references "only to their usual or * * * generic versions—not to all variants." *Mathis* v. *United States*, 136 S. Ct. 2243, 2248 (2016). But petitioner identifies no decision that adopted a generic-analogue analysis for the ACCA generally or for Section 924(e)(2)(A)(ii) in particular. And nothing in the language or logic of *Taylor* indicates that the approach the Court adopted for the enumerated-offenses clause extends to the ACCA's other provisions.

Nor is petitioner correct in asserting that other decisions of this Court support reading "involving" effectively to mean "matches a generic analogue offense," see Pet. Br. 15—let alone that those decisions foreclose construing the text in the same natural way that the Court did in *Kawashima*. In *Scheidler* v. *National Organization for Women, Inc.*, 537 U.S. 393 (2003), the Court construed a provision of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. 1961 *et seq.*, which defined a predicate act of "racketeering activity" to include (*inter alia*) "any act or threat involving * * * extortion * * * chargeable under State law and punishable by imprisonment for more than one year." 18 U.S.C. 1961(1)(A); see *Scheidler*, 537 U.S. at 409-410. The plaintiffs in that case (who brought a civil action under RICO against the defendants) "concede[d]" both (1) that, "for a state offense" to fall within that definition, "the conduct must be capable of being generically classified as extortionate," and (2) that "such 'generic' extortion is defined as 'obtaining something of value from another with his consent induced by the wrongful use of force, fear, or threats.'" 537 U.S. at 409 (citations omitted). This Court held that, because the defendants "did not obtain or attempt to obtain [the plaintiffs'] property," *id.* at 410, their conduct did not "involv[e] * * * extortion." 18 U.S.C. 1961(1)(A).

In accepting the plaintiffs' second concession—that "'generic' extortion" requires obtaining the something of value from another by force, fear, or threats—the Court consulted a "generic definition of extortion" to ascertain whether the conduct to which that term refers includes obtaining or seeking to obtain property, just as a court might consult a legal dictionary to define any legal term. See *Scheidler*, 537 U.S. at 409-410 (citations omitted). But the Court did not construe the statute to require identifying all of the elements of a "generic" version of extortion and then determining whether the elements of the state-law offense at issue were identical to or subsumed by that generic offense. And although state law might provide a useful reference for discerning the meaning of the legal term "extortion," the Court's approach in *Scheidler* does not suggest that the simple gerunds "manufacturing" and "distributing" have an implicit mens rea requirement that must be divined through a 50-State survey of different drug laws.

Petitioner also points (Br. 15-16) to what he describes as "dicta" in *Lockhart* v. *United States*, 136 S. Ct. 958 (2016), but it likewise does not support his reading of the ACCA. In that case, the Court held that, in a federal statute imposing an enhanced sentence on defendants with a prior conviction "'under the laws of any State relating to'" (*inter alia*) "'aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward,'" the qualifying phrase "involving a minor or ward" modified only "'abusive sexual conduct,' the antecedent immediately preceding it," and not the other listed offenses. *Id.* at 962 (quoting 18 U.S.C. 2252(b)(2)). The Court rejected the defendant's suggestion that state and federal convictions should be analyzed differently, on the theory that Congress would have been

"worried that state laws punishing relatively minor offenses" might "sweep in" various "bizarre or unexpected" crimes. *Id.* at 968. The Court noted that, whether the words of the federal law at issue "[we]re given their 'generic' meaning * * * or are defined in light of their federal counterparts"—an issue the Court "d[id] not decide"—they would not encompass the fringe cases that the defendant flagged. *Ibid.* Nothing in that discussion establishes that the word "involving"—which, in the statute at issue, modified only the words "minor or ward," not any description of conduct—invariably necessitates comparison to a full generic-analogue crime.

4. Petitioner's remaining arguments likewise lack merit. He contends (Br. 10-13, 19-23) that, when the ACCA amendments were enacted in 1986, the vast majority of state controlled-substances laws and federal controlled-substances law required mens rea, and Congress could not have intended Section 924(e)(2)(A)(ii) to encompass "strict liability crimes" that lacked such a requirement. Pet. Br. 23. But that contention simply assumes the answer to the question presented in this case, and it cannot be squared with Section 924(e)(2)(A)(ii)'s text. So long as an offense's elements necessarily entail manufacturing, distributing, or possessing with intent to manufacture or distribute a controlled substance, what else (if anything) its elements might require is irrelevant.

Petitioner's reliance (Br. 22) on *Quarles* v. *United States*, 139 S. Ct. 1872 (2019), and *United States* v. *Stitt*, *supra*, for the proposition that Congress must have incorporated into the ACCA the "nearly universal agreement" favoring a mens rea element for drug crimes lacks merit. Neither *Quarles* nor *Stitt* addressed the meaning of "involving" in Section 924(e)(2)(A)(ii); instead, both

were applications of *Taylor*'s conclusion—inapposite here—that the enumerated-offenses clause's reference to "burglary" means "the generic sense in which the term is now used in the criminal codes of most States." 495 U.S. at 598; see *Quarles*, 139 S. Ct. at 1877-1878; *Stitt*, 139 S. Ct. at 406. Furthermore, in each case, this Court *rejected* narrowing interpretations of "burglary" that would have excluded many States' burglary laws. Petitioner does not suggest that his reading of Section 924(e)(2)(A)(ii) is necessary to avoid a similarly illogical gap in that provision's scope. Indeed, Section 924(e)(2)(A)(ii)'s text avoids such gaps precisely because it covers any state offense that necessarily entails manufacturing, distributing, or possessing with intent to manufacture a controlled substance—irrespective of additional requirements of the offense.

In any event, petitioner's assertion (Br. 7, 22-23) that the Florida law under which he was convicted six times establishes a "strict liability crime[]" is overstated. At the time of the conduct underlying petitioner's convictions (and today), Section 893.13(1)(a) did require a particular mens rea—namely, "knowledge of the presence of the substance." *State* v. *Adkins*, 96 So. 3d 412, 415-416 (Fla. 2012) (citing *Chicone* v. *State*, 684 So. 2d 736, 739-740 (Fla. 1996), and Scott v. State, 808 So. 2d 166 (Fla. 2002), and quoting Fla. Stat. § 893.101 (2011)). And although the Florida law did not additionally require the prosecution to prove that the defendant who sold, manufactured, or delivered a controlled substance (or possessed with intent to do so) had knowledge of the illicit nature of the substance, the defendant could raise the lack of such knowledge as an affirmative defense. See *ibid.* No sound basis exists to suppose that Con-

gress, in imposing enhanced penalties for career offenders with multiple qualifying prior convictions, intended the application of those enhanced penalties to turn on precisely how state law allocated the burden of proof for that particular fact.

Petitioner's invocation (Br. 23) of a "presumption" that criminal statutes require proving mens rea is similarly misdirected. This Court has stated that, where a substantive federal criminal statute is "silent on the required mental state," the Court may "read into the statute" the "'*mens rea* which is necessary to separate wrongful conduct from "otherwise innocent conduct."'" *Elonis* v. *United States*, 135 S. Ct. 2001, 2010 (2015) (citations omitted); cf. *Dean* v. *United States*, 556 U.S. 568, 574-577 (2009) (finding presumption inapplicable). But the question here is not what mental state a federal criminal prohibition requires, but instead whether petitioner's six prior convictions under state law qualify him for an enhanced sentence upon his felon-in-possession conviction. Nothing in Section 924(e)(2)(A)(ii)'s text invites, let alone compels, a court to presume that Congress meant to cover only convictions for state offenses that require the same mens rea that courts read into ambiguous or silent federal criminal statutes.

Finally, petitioner briefly asserts (Br. 21) that the rule of lenity requires that any ambiguity should be resolved in his favor. But this Court "ha[s] used the lenity principle to resolve ambiguity in favor of the defendant only 'at the end of the process of construing what Congress has expressed' when the ordinary canons of statutory construction have revealed no satisfactory construction," *Lockhart*, 136 S. Ct. at 968 (citation omitted) —that is, only when all other tools of interpretation have been exhausted and a "grievous ambiguity" remains,

Dean, 556 U.S. at 577. "That is not the case here." *Lockhart*, 136 S. Ct. at 968. The text of Section 924(e)(2)(A)(ii) conclusively answers the question at issue: it covers state offenses that carry maximum prison terms of at least ten years and that "involv[e]" manufacturing, distributing, or possessing with intent to manufacture or distribute a controlled substance. Nothing in the language opens the door to petitioner's generic-analogue inquiry. And if the text alone left the door ajar, context closes it. See pp. 16-18, *supra*.

C. Extending A Generic-Analogue Analysis To Section 924(e)(2)(A)(ii) Would Invite Practical Difficulties And Exacerbate Geographic Disparities

Congress's decision not to employ language in Section 924(e)(2)(A)(ii) requiring comparison of state offenses to a generic analogue, as it did in the enumerated-offenses clause construed in *Taylor*, made practical sense. Extending that generic-analogue analysis to Section 924(e)(2)(A)(ii) would invite practical difficulties for courts and increase the risk of geographically disuniform sentencing outcomes.

1. As petitioner observes, the offenses covered by the enumerated-offenses clause at issue in *Taylor*—"burglary, arson, or extortion," 18 U.S.C. 924(e)(2)(B)(ii)—"have a deeply rooted, common-law heritage." Pet. Br. 14. And although state-law definitions of those offenses varied, they had a sufficiently common core in 1986—distilled in surveys of state laws and a widely adopted model statute—to enable courts to posit generic versions of those offenses. *Ibid.*; see, *e.g.*, *Quarles*, 139 S. Ct. at 1876-1879; *Stitt*, 139 S. Ct. at 405-406 (citing 2 Wayne R. LaFave & Austin W. Scott, Jr., *Substantive Criminal Law* §§ 8.13(a)-(f), at 464-475 (1986), and quoting Model Penal Code, §§ 221.0(1), 221.1(1) (1980)). In

contrast, as petitioner notes (Br. 14), although many States had controlled-substance laws in 1986, "[t]he drug offenses that Congress deemed 'serious'—manufacturing, distributing, or possessing with intent to manufacture or distribute a controlled substance—did not have the same heritage and the same established lexicon" as the crimes in the enumerated-offenses clause. And they "did not exist in the same form in all of the [S]tates." *Ibid.*

Rather than require courts to attempt to synthesize a generic version of those relatively new and variegated drug offenses, Congress allowed courts in Section 924(e)(2)(A)(ii) simply to ask whether a state-law offense necessarily entails particular conduct (and for possession, a specified mental state). That approach spared courts from the difficult task of hypothesizing the contours of a generic offense at a time when state laws were varied and in flux. Divining the generic version even of offenses as deeply rooted as burglary has sometimes proven difficult for lower courts. Cf. *Quarles*, 139 S. Ct. at 1876 (noting circuit conflict on scope of generic burglary under Section 924(e)(2)(B)(ii)); *Stitt*, 139 S. Ct. at 404-405 (same). Lower courts likely would have faced greater difficulty still attempting to derive "generic" forms of controlled-substance offenses that lacked such a long history and varied more widely.

Defendants would have strong incentives to advocate a bespoke, reticulated version of any generic-analogue drug offense—and to argue that any variance between a state law and the generic offense precludes an ACCA enhancement. Cf. *Quarles*, 139 S. Ct. at 1880 (disapproving similar approach to ACCA "burglary"). Indeed, at defendants' urging, some lower courts applying Section 924(e)(2)(A)(ii) have analyzed whether the defendants' state offenses satisfy that provision by examining

whether ancillary aspects of those state offenses, including the standards for accomplice and attempt liability, sufficiently matched their generic counterparts. See *United States* v. *Franklin*, 904 F.3d 793, 797-803 (9th Cir. 2018) (concluding that Washington state offense for possession with intent to deliver cocaine did not satisfy Section 924(e)(2)(A)(ii) because court concluded that Washington law's definition of accomplice liability was broader than "generic aiding and abetting liability"), cert. dismissed, 139 S. Ct. 2690 (2019); *United States* v. *Daniels*, 915 F.3d 148, 158-159 (3d Cir. 2019) (concluding that offense under Pennsylvania law for manufacturing, delivering, or possessing with intent to manufacture a controlled substance satisfied Section 924(e)(2)(A)(ii) because Pennsylvania law's definition of attempt liability sufficiently corresponded to federal definition), petition for cert. pending, No. 19-28 (filed July 1, 2019). The approach Congress prescribed in Section 924(e)(2)(A)(ii)'s text avoids the need for courts to confront such questions.

2. Construing Section 924(e)(2)(A)(ii) to incorporate the *Kawashima* approach also minimizes "the risk that state law discrepancies in defining predicate offenses would result in disparate sentences for the same conduct," NACDL Amicus Br. 13, which everyone agrees was one of Congress's goals, see *id.* at 12-13, 17-21; FAMM Amicus Br. 16-20; see also Pet. Br. 19. By treating all state-law offenses that necessarily entail the listed conduct on equal footing, the *Kawashima* approach makes variation among state laws as to additional requirements of state offenses irrelevant, reducing the prospect of geographic disparity.

Petitioner's interpretation, in contrast, would invite defendants to argue that state offenses that cover substantially the same conduct should be treated differently under the ACCA based on variations concerning ancillary issues. As this case itself illustrates, petitioner's approach would mean that defendants convicted under Florida law escape enhanced sentences under the ACCA that apply to offenders convicted for the same conduct elsewhere solely because Florida law places the burden on the defendant engaged in drug trafficking to prove that he did not know the illicit nature of the drugs. The statutory text does not compel that anomalous outcome, and petitioner identifies no reason to suppose that Congress intended it.

No approach can eliminate all possible geographic variation in ACCA outcomes. Variation that results from substantive differences in the conduct that States have chosen to criminalize is an unavoidable consequence of Congress's decision in the ACCA to make state-law offenses predicates for an enhanced sentence. But it is petitioner's approach, not the *Kawashima* approach, that would give outsized significance to the particular requirements of state law. As experience in the context of "burglary" reflects, efforts to define a "generic" offense inherently embroil the courts in drawing lines between different state laws, by deciding whether an element that only some statute laws include is part of the "generic" crime.

The textual, "involving" approach to Section 924(e)(2)(A)(ii)—which focuses on a *single* aspect of the state crime, rather than requiring courts to define *every* aspect of a generic crime—is far superior to petitioner's approach as a way to promote equal treatment of defendants across the country. And based on Section

924(e)(2)(A)(ii)'s text and context, it is the approach that the provision requires.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

1. 8 U.S.C. 1101(a)(43)(M) provides:

Definitions

(a) As used in this chapter—

(43) The term "aggravated felony" means—

(M) an offense that—

(i) involves fraud or deceit in which the loss to the victim or victims exceeds $10,000; or

(ii) is described in section 7201 of title 26 (relating to tax evasion) in which the revenue loss to the Government exceeds $10,000;

2. 18 U.S.C. 924 provides in pertinent part:

Penalties

(a)(1) Except as otherwise provided in this subsection, subsection (b), (c), (f), or (p) of this section, or in section 929, whoever—

(A) knowingly makes any false statement or representation with respect to the information required by this chapter to be kept in the records of a person licensed under this chapter or in applying for any license or exemption or relief from disability under the provisions of this chapter;

(B) knowingly violates subsection (a)(4), (f), (k), or (q) of section 922;

(C) knowingly imports or brings into the United States or any possession thereof any firearm or ammunition in violation of section 922(*l*); or

(D) willfully violates any other provision of this chapter,

shall be fined under this title, imprisoned not more than five years, or both.

(2) Whoever knowingly violates subsection (a)(6), (d), (g), (h), (i), (j), or (*o*) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both.

* * * * *

(e)(1) In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).

(2) As used in this subsection—

(A) the term "serious drug offense" means—

(i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46 for which a maximum term of imprisonment of ten years or more is prescribed by law; or

(ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled

Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law;

(B) the term "violent felony" means any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult, that—

(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or

(ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another; and

(C) the term "conviction" includes a finding that a person has committed an act of juvenile delinquency involving a violent felony.

* * * * *

3. 18 U.S.C. App. 1201 (1982) provides:

Congressional findings and declaration

The Congress hereby finds and declares that the receipt, possession, or transportation of a firearm by felons, veterans who are discharged under dishonorable conditions, mental incompetents, aliens who are illegally in the country and former citizens who have renounced their citizenship, constitutes—

(1) a burden on commerce or threat affecting the free flow of commerce,

(2) a threat to the safety of the President of the United States and Vice President of the United States,

(3) an impediment or a threat to the exercise of free speech and the free exercise of a religion guaranteed by the first amendment to the Constitution of the United States, and

(4) a threat to the continued and effective operation of the Government of the United States and of the government of each State guaranteed by article IV of the Constitution.

4. 18 U.S.C. App. 1202 (1982 & Supp. II 1984) provides:

Receipt, possession, or transportation of firearms

(a) Persons liable; penalties for violations

Any person who—

(1) has been convicted by a court of the United States or of a State or any political subdivision thereof of a felony, or

(2) has been discharged from the Armed Forces under dishonorable conditions, or

(3) has been adjudged by a court of the United States or of a State or any political subdivision thereof of being mentally incompetent, or

(4) having been a citizen of the United States has renounced his citizenship, or

(5) being an alien is illegally or 'unlawfully in the United States,

and who receives, possesses, or transports in commerce or affecting commerce, after the date of enactment of this Act, any firearm shall be fined not more than $10,000 or imprisoned for not more than two years, or both. In the case of a person who receives, possesses, or transports in commerce or affecting commerce any firearm and who has three previous convictions by any court referred to in paragraph (1) of this subsection for robbery or burglary, or both, such person shall be fined not more than $25,000 and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to such person with respect to the conviction under this subsection, and such person shall not be eligible for parole with respect to the sentence imposed under this subsection.

(b) Employment; persons liable; penalties for violations

Any individual who to his knowledge and while being employed by any person who—

(1) has been convicted by a court of the United States or of a State or any political subdivision thereof of a felony, or

(2) has been discharged from the Armed Forces under dishonorable conditions, or

(3) has been adjudged by a court of the United States or of a State or any political subdivision thereof of being mentally incompetent, or

(4) having been a citizen of the United States has renounced his citizenship, or

(5) being an alien is illegally or unlawfully in the United States,

(c) Definitions

As used in this title—

(1) "commerce" means travel, trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia and any State, or between any foreign country or any territory or possession and any State or the District of Columbia, or between points in the same State but through any other State or the District of Columbia or a foreign country;

(2) "felony" means any offense punishable by imprisonment for a term exceeding one year, but does not include any offense (other than one involving a firearm or explosive) classified as a misdemeanor under the laws of a State and punishable by a term of imprisonment of two years or less;

(3) "firearm" means any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; or any firearm muffler or firearm silencer; or any destructive device. Such term shall include any handgun, rifle, or shotgun;

(4) "destructive device" means any explosive, incendiary, or poison gas bomb, grenade, mine, rocket, missile, or similar device; and includes any type of weapon which will or is designed to or may readily be converted to expel a projectile by the action of any explosive and having any barrel with a bore of one-half inch or more in diameter;

(5) "handgun" means any pistol or revolver originally designed to be fired by the use of a single hand and which is designed to fire or capable of firing fixed cartridge ammunition, or any other firearm originally designed to be fired by the use of a single hand;

(6) "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

(7) "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger;

(8) "robbery" means any felony consisting of the taking of the property of another from the person or presence of another by force or violence, or by threatening or placing another person in fear that any person will imminently be subjected to bodily injury; and

(9) "burglary" means any felony consisting of entering or remaining surreptitiously within a building that is property of another with intent to engage in conduct constituting a Federal or State offense.

5. Firearms Owners' Protection Act, Pub. L. No. 99-308, § 104, 100 Stat. 456 provides:

SEC. 104. AMENDMENTS TO SECTION 924.

(a) IN GENERAL.—Section 924 of title 18, United States Code, is amended—

(1) so that subsection (a) reads as follows:

"(a)(1) Except as otherwise provided in paragraph (2) of this subsection, subsection (b) or (c) of this section, or in section 929, whoever—

"(A) knowingly makes any false statement or representation with respect to the information required by this chapter to be kept in the records of a person licensed under this chapter or in applying for any license or exemption or relief from disability under the provisions of this chapter;

"(B) knowingly violates subsection (a)(4), (a)(6), (f), (g), (i), (j), or (k) of section 922;

"(C) knowingly imports or brings into the United States or any possession thereof any firearm or ammunition in violation of section 922(l); or

"(D) willfully violates any other provision of this chapter,

shall be fined not more than $5,000, imprisoned not more than five years, or both, and shall become eligible for parole as the Parole Commission shall determine.

"(2) Any licensed dealer, licensed importer, licensed manufacturer, or licensed collector who knowingly—

"(A) makes any false statement or representation with respect to the information required by the

provisions of this chapter to be kept in the records of a person licensed under this chapter, or

"(B) violates subsection (m) of section 922,

shall be fined not more than $1,000, imprisoned not more than one year, or both, and shall become eligible for parole as the Parole Commission shall determine.";

(2) in subsection (c)—

(A) by inserting "(1)" before "Whoever,";

(B) by striking out "violence" each place it appears and inserting in lieu thereof "violence or drug trafficking crime,";

(C) by inserting "or drug trafficking crime" before "in which the firearm was used or carried.";

(D) in the first sentence, by striking out the period at the end and inserting in lieu thereof ", and if the firearm is a machinegun, or is equipped with a firearm silencer or firearm muffler, to imprisonment for ten years.";

(E) in the second sentence, by striking out the period at the end and inserting in lieu thereof ", and if the firearm is a machinegun, or is equipped with a firearm silencer or firearm muffler, to imprisonment for twenty years."; and

(F) by adding at the end the following:

"(2) For purposes of this subsection, the term 'drug trafficking crime' means any felony violation of Federal law involving the distribution, manufacture, or importation of any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

"(3) For purposes of this subsection the term 'crime of violence' means an offense that is a felony and—

"(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

"(B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.";

(3) by amending subsection (d) to read as follows:

"(d)(1) Any firearm or ammunition involved in or used in any knowing violation of subsection (a)(4), (a)(6), (f), (g), (h), (i), (j), or (k) of section 922, or knowing importation or bringing into the United States or any possession thereof any firearm or ammunition in violation of section 922(l), or knowing violation of section 924, or willful violation of any other provision of this chapter or any rule or regulation promulgated thereunder, or any violation of any other criminal law of the United States, or any firearm or ammunition intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1954 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter: *Provided,* That upon acquittal of the owner or possessor, or dismissal of the charges against him other than upon motion of the

Government prior to trial, the seized firearms or ammunition shall be returned forthwith to the owner or possessor or to a person delegated by the owner or possessor unless the return of the firearms or ammunition would place the owner or possessor or his delegate in violation of law. Any action or proceeding for the forfeiture of firearms or ammunition shall be commenced within one hundred and twenty days of such seizure.

"(2)(A) In any action or proceeding for the return of firearms or ammunition seized under the provisions of this chapter, the court shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

"(B) In any other action or proceeding under the provisions of this chapter, the court, when it finds that such action was without foundation, or was initiated vexatiously, frivolously, or in bad faith, shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

"(C) Only those firearms or quantities of ammunition particularly named and individually identified as involved in or used in any violation of the provisions of this chapter or any rule or regulation issued thereunder, or any other criminal law of the United States or as intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure, forfeiture, and disposition.

"(D) The United States shall be liable for attorneys' fees under this paragraph only to the extent provided in advance by appropriation Acts.

"(3) The offenses referred to in paragraphs (1) and (2)(C) of this subsection are—

"(A) any crime of violence, as that term is defined in section 924(c)(3) of this title;

"(B) any offense punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.);

"(C) any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of this title, where the firearm or ammunition intended to be used in any such offense is involved in a pattern of activities which includes a violation of any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of this title;

"(D) any offense described in section 922(d) of this title where the firearm or ammunition is intended to be used in such offense by the transferor of such firearm or ammunition;

"(E) any offense described in section 922(i), 922(j), 922(l), 922(n), or 924(b) of this title; and

"(F) any offense which may be prosecuted in a court of the United States which involves the exportation of firearms or ammunition."; and

(4) by adding at the end the following new subsection:

"(e)(1) In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for robbery or burglary, or both, such person shall be fined not more than $25,000 and imprisoned not less than fifteen years, and, notwithstanding any other provision of

law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g), and such person shall not be eligible for parole with respect to the sentence imposed under this subsection.

"(2) As used in this subsection—

"(A) the term 'robbery' means any crime punishable by a term of imprisonment exceeding one year and consisting of the taking of the property of another from the person or presence of another by force or violence, or by threatening or placing another person in fear that any person will imminently be subjected to bodily harm; and

"(B) the term 'burglary' means any crime punishable by a term of imprisonment exceeding one year and consisting of entering or remaining surreptitiously within a building that is the property of another with intent to engage in conduct constituting a Federal or State offense.".

(b) CONFORMING REPEAL.—Title VII of the Omnibus Crime Control and Safe Streets Act of 1968 (18 U.S.C. App. 1201 et seq.) is repealed.

6. Career Criminals Amendment Act of 1986, Tit. I, Subtit. I, § 1402, 100 Stat. 3207-39 provides:

SEC. 1402. EXPANSION OF PREDICATE OFFENSES FOR ARMED CAREER CRIMINAL PENALTIES.

(a) IN GENERAL.—Section 924(e)(1) of title 18, United States Code, is amended by striking out "for robbery or burglary, or both," and inserting in lieu thereof "for a violent felony or a serious drug offense, or both,".

(b) DEFINITIONS.—Section 924(e)(2) of title 18, United States Code, is amended by striking out subparagraph (A) and all that follows through subparagraph (B) and inserting in lieu thereof the following:

"(A) the term 'serious drug offense' means—

"(i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the first section or section 3 of Public Law 96-350 (21 U.S.C. 955a et seq.), for which a maximum term of imprisonment of ten years or more is prescribed by law; or

"(ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law; and

"(B) the term 'violent felony' means any crime punishable by imprisonment for a term exceeding one year that—

"(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or

"(ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another.".

7. Fla. Stat. § 893.03 (2012) provides in pertinent part:

Standards and schedules.—The substances enumerated in this section are controlled by this chapter. The controlled substances listed or to be listed in Schedules I, II, III, IV, and V are included by whatever official, common, usual, chemical, or trade name designated. The provisions of this section shall not be construed to include within any of the schedules contained in this section any excluded drugs listed within the purview of 21 C.F.R. s. 1308.22, styled "Excluded Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt Anabolic Steroid Products."

* * * * *

(2) SCHEDULE II.—A substance in Schedule II has a high potential for abuse and has a currently accepted but severely restricted medical use in treatment in the United States, and abuse of the substance may lead to severe psychological or physical dependence. The following substances are controlled in Schedule II:

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances,

whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis:

* * * * *

4. Cocaine or ecgonine, including any of their stereoisomers, and any salt, compound, derivative, or preparation of cocaine or ecgonine.

* * * * *

8. Fla. Stat. § 893.03 (2019) provides in pertinent part:

Standards and schedules.—The substances enumerated in this section are controlled by this chapter. The controlled substances listed or to be listed in Schedules I, II, III, IV, and V are included by whatever official, common, usual, chemical, trade name, or class designated. The provisions of this section shall not be construed to include within any of the schedules contained in this section any excluded drugs listed within the purview of 21 C.F.R. s. 1308.22, styled "Excluded Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt Anabolic Steroid Products."

* * * * *

(2) SCHEDULE II.—A substance in Schedule II has a high potential for abuse and has a currently accepted but severely restricted medical use in treatment in the United States, and abuse of the substance may lead to severe psychological or physical dependence. The following substances are controlled in Schedule II:

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis:

* * * * *

4. Cocaine or ecgonine, including any of their stereoisomers, and any salt, compound, derivative, or preparation of cocaine or ecgonine, except that these substances shall not include ioflupane I 123.

9. Fla. Stat. § 893.101 (2011) provides:

Legislative findings and intent.—

(1) The Legislature finds that the cases of *Scott v. State*, Slip Opinion No. SC94701 (Fla. 2002) and *Chicone v. State*, 684 So.2d 736 (Fla. 1996), holding that the state must prove that the defendant knew of the illicit nature of a controlled substance found in his or her actual or constructive possession, were contrary to legislative intent.

(2) The Legislature finds that knowledge of the illicit nature of a controlled substance is not an element of any offense under this chapter. Lack of knowledge of the illicit nature of a controlled substance is an affirmative defense to the offenses of this chapter.

(3) In those instances in which a defendant asserts the affirmative defense described in this section, the possession of a controlled substance, whether actual or constructive, shall give rise to a permissive presumption

that the possessor knew of the illicit nature of the substance. It is the intent of the Legislature that, in those cases where such an affirmative defense is raised, the jury shall be instructed on the permissive presumption provided in this subsection.

10. Fla. Stat. § 893.13(1) (2012)

Prohibited acts; penalties.—

(1)(a) Except as authorized by this chapter and chapter 499, it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance. Any person who violates this provision with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. A controlled substance named or described in s. 893.03(5) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Except as provided in this chapter, it is unlawful to sell or deliver in excess of 10 grams of any substance named or described in s. 893.03(1)(a) or (1)(b), or any combination thereof, or any mixture containing any such substance. Any person who violates this paragraph

commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Except as authorized by this chapter, it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising a child care facility as defined in s. 402.302 or a public or private elementary, middle, or secondary school between the hours of 6 a.m. and 12 midnight, or at any time in, on, or within 1,000 feet of real property comprising a state, county, or municipal park, a community center, or a publicly owned recreational facility. For the purposes of this paragraph, the term "community center" means a facility operated by a nonprofit community-based organization for the provision of recreational, social, or educational services to the public. Any person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The defendant must be sentenced to a minimum term of imprisonment of 3 calendar years unless the offense was committed within 1,000 feet of the real property comprising a child care facility as defined in s. 402.302.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a $500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

This paragraph does not apply to a child care facility unless the owner or operator of the facility posts a sign that is not less than 2 square feet in size with a word legend identifying the facility as a licensed child care facility and that is posted on the property of the child care facility in a conspicuous place where the sign is reasonably visible to the public.

(d) Except as authorized by this chapter, it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising a public or private college, university, or other postsecondary educational institution. Any person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a $500 fine and to serve 100 hours of public

service in addition to any other penalty prescribed by law.

(e) Except as authorized by this chapter, it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance not authorized by law in, on, or within 1,000 feet of a physical place for worship at which a church or religious organization regularly conducts religious services or within 1,000 feet of a convenience business as defined in s. 812.171. Any person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a $500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

(f) Except as authorized by this chapter, it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising a public housing facility at any time. For purposes of this section, the term "real property comprising a public housing facility" means real

property, as defined in s. 421.03(12), of a public corporation created as a housing authority pursuant to part I of chapter 421. Any person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a $500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

(g) Except as authorized by this chapter, it is unlawful for any person to manufacture methamphetamine or phencyclidine, or possess any listed chemical as defined in s. 893.033 in violation of s. 893.149 and with intent to manufacture methamphetamine or phencyclidine. If any person violates this paragraph and:

1. The commission or attempted commission of the crime occurs in a structure or conveyance where any child under 16 years of age is present, the person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In addition, the defendant must be sentenced to a minimum term of imprisonment of 5 calendar years.

2. The commission of the crime causes any child under 16 years of age to suffer great bodily harm, the person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In addition, the defendant must be sentenced to a minimum term of imprisonment of 10 calendar years.

(h) Except as authorized by this chapter, it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising an assisted living facility, as that term is used in chapter 429. Any person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

11. Fla. Stat. § 893.13(1) (2019)

Prohibited acts; penalties.—

(1)(a) Except as authorized by this chapter and chapter 499, a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance. A person who violates this provision with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. A controlled substance named or described in s. 893.03(5) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Except as provided in this chapter, a person may not sell or deliver in excess of 10 grams of any substance named or described in s. 893.03(1)(a) or (b), or any combination thereof, or any mixture containing any such substance. A person who violates this paragraph commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Except as authorized by this chapter, a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising a child care facility as defined in s. 402.302 or a public or private elementary, middle, or secondary school between the hours of 6 a.m. and 12 midnight, or at any time in, on, or within 1,000 feet of real property comprising a state, county, or municipal park, a community center, or a publicly owned recreational facility. As used in this paragraph, the term "community center" means a facility operated by a nonprofit community-

based organization for the provision of recreational, social, or educational services to the public. A person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The defendant must be sentenced to a minimum term of imprisonment of 3 calendar years unless the offense was committed within 1,000 feet of the real property comprising a child care facility as defined in s. 402.302.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a $500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

This paragraph does not apply to a child care facility unless the owner or operator of the facility posts a sign that is not less than 2 square feet in size with a word legend identifying the facility as a licensed child care facility and that is posted on the property of the child care facility in a conspicuous place where the sign is reasonably visible to the public.

(d) Except as authorized by this chapter, a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property

comprising a public or private college, university, or other postsecondary educational institution. A person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a $500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

(e) Except as authorized by this chapter, a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance not authorized by law in, on, or within 1,000 feet of a physical place for worship at which a church or religious organization regularly conducts religious services or within 1,000 feet of a convenience business as defined in s. 812.171. A person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7.,

(2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a $500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

(f) Except as authorized by this chapter, a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising a public housing facility at any time. As used in this section, the term "real property comprising a public housing facility" means real property, as defined in s. 421.03(12), of a public corporation created as a housing authority pursuant to part I of chapter 421. A person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a $500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

(g) Except as authorized by this chapter, a person may not manufacture methamphetamine or phencyclidine, or possess any listed chemical as defined in s. 893.033 in violation of s. 893.149 and with intent to manufacture methamphetamine or phencyclidine. If a person violates this paragraph and:

1. The commission or attempted commission of the crime occurs in a structure or conveyance where any child younger than 16 years of age is present, the person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In addition, the defendant must be sentenced to a minimum term of imprisonment of 5 calendar years.

2. The commission of the crime causes any child younger than 16 years of age to suffer great bodily harm, the person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In addition, the defendant must be sentenced to a minimum term of imprisonment of 10 calendar years.

(h) Except as authorized by this chapter, a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising an assisted living facility, as that term is used in chapter 429. A person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a $500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.